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Utility Rates at the Crossroads

The three pathways that confront the regulatory commissions and the utility industry

BY LUTHER R. NASH

THIS article does not deal specifically with the charges for electric lights or telephones in such remote centers as Hemlock Corners; it deals with the theories and practices of rate regulation in effect and in prospect through state commissions.

We have had this form of regulation of public utility rates in the United States for twenty-five years. It has generally operated successfully. The whole program, to be sure, was originally opposed by some utility executives, but experience with it has led not only to general acceptance but to its unqualified approval. During that period we have seen continued expansion of public utility service and, at least as far as the character of service permitted, we have seen consistent reductions in rates. To illustrate, the average rates for domestic electric service have been reduced about 45 per cent.

It is sometimes alleged that these reductions in rates have been made not because of regulation but in spite of it; that the responsibilities for these reductions have rested with management and the increasing volume of business. It is further charged that regulation has "broken down" and that some other methods are neces-

sary to prevent extortion by public utilities and their ruthless domination of our industrial life. Such opinions are not widely held and, regardless of the reasons for rate reductions and the allocation of credit therefor, the commissions have undoubtedly demonstrated their usefulness by improving the quality of service and its extension into new fields, and by preventing discrimination.

THE peaceful processes of regulation have from time to time been disturbed, superficially at least, by wrangles over certain factors. These wrangles include the basis of valuation; should it be prudent investment —or present value as defined by our higher courts? Fortunately this issue is becoming academic, because of the trend of prices toward pre-war levels, although some of the more enthusiastic proponents of prudent investment have apparently not realized that now or in the near future it may yield a higher rate base than the reproduction method. Fear has also been expressed that interference of the Federal courts may impair or destroy the control of the regulatory commissions over rates. Studies of the extent of this interference which have appeared in the columns of this magazine [1] do not disclose a reasonable basis for such fears.

The time and expense involved in rate controversies have often been criticized by both parties to it, and the efforts which are now being made to eliminate nonessential issues is encouraging. Further improvement and expedition are to be expected through the program of settlement by informal negotiation which is being advocated by prominent commissions [2] and rate utility representatives.

DURING the history of rate regulation there has gradually developed a technique based on the assumption, derived from court decisions, that the charge for utility service should be equal to its cost, and that the cost include operating expenses and taxes, provision for the permanent upkeep of the property, and a reasonable return upon its value. While this basis has generally been consistently applied to rates as a whole, similar consistency has not prevailed with respect to rates for individual customers for all classes of service. It is commonly understood that certain classes of service or substantial proportions of the customers in such classes fail to pay the full allocated cost of their service.

The writer has made many analyses of actual situations, some of which are embodied in his forthcoming book, "Public Utility Rate Structures." These analyses show, contrary to popular impressions, that domestic electric and gas services yield a smaller return than the business as a whole. In fact, it appears that electric customers who use less than about twenty kilowatt hours per month, and gas customers who use less than about 2,000 feet per month, normally fail to pay the full cost of their service. Consumptions within the stated limits include in many cases the require-

[1] Spurr, H. C., "Are the Courts Thwarting the Purposes of the Legislators?" January 23, 1930; "The Effect of Federal Court Decisions on State Regulation," March 5, 1931.

[2] Washington Heights Taxpayers Asso. *v.* New York Edison Co. (N. Y.) P.U.R.1932E, 218, 232.

ments of a majority of domestic consumers.

It is obvious that under such circumstances this class of customers cannot contribute toward the support of wholesale industrial service, as is sometimes claimed.

DURING the past year the equity of the basic principles of regulation outlined above has been questioned. In fact, so emphatic and far-reaching has this questioning been as to arouse fears as to the survival of our existing regulatory methods. Ostensibly, the ground for the current assault upon existing regulatory methods is that rates should be based on value of service rather than on cost. Such a basis is by no means novel. It has had recognition in decisions of courts and commissions dating back to the pioneer case of Smyth *v.* Ames in 1898. While the intent of the courts as to the extent to which value of service should be recognized in fixing rates is not wholly clear, a study of the cases dealing with this subject warrants the following conclusions:

The value-of-service theory has not led to the fixing of normal rates below the cost of service. The clearest cases seem to assume that the value of service is normally in excess of its cost. In certain specific cases it is held that th cost of service is a minimum and that the value of service a maximum, between which limits regulatory bodies may exercise their discretion.[3]

THE question of what value of service means was ably discussed by Mr. Henry C. Spurr in a recent article in this magazine.[4] As he points out, aside from the equity of this basis of rates, grave difficulties are encountered in its application, owing to lack of a suitable yardstick with which to measure value. The value of standard commodities to purchasers or prospective purchasers may be measured by the extent of their purchases. If a commodity has very restricted sales under normal business conditions, it is obvious that its value to the average person is less than its price. Applying this principle to public utility service, we find that about one half the homes in the United States have telephones, and that two thirds of them have electric lights.

Does this mean that telephone rates are high as compared with electric rates, as suggested by the smaller patronage?

On the other hand, may it not be that electric service should be enjoyed by more than two thirds of the homes, and that rates should be reduced until some higher percentage, say 75 or more, is served?

Obviously, 100 per cent could not be established as a basis because even

[3] Public Service Railway Co. *v.* Public Utility Comrs. 276 Fed. 979, P.U.R.1921E, 632, 639.
[4] September 29, 1932, p. 363.

¶ "THE *commissions have too long been accustomed to regulate rates through rules or mathematical formulas, the application of which yields the required revenue, to abandon abruptly this method for one which may not be clearly understood and which may encounter political opposition.*"

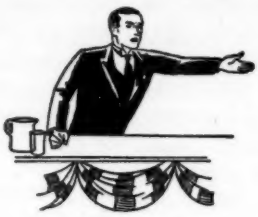
if rates were reduced to zero, many homes could not afford the cost of wiring and appliances necessary to use free service.

A SEARCH of the decisions and other discussions relating to this subject shows that no logical or practical basis for specifically determining the value of service has so far been developed. Such lack of any practical definition of value of service has, however, been no obstacle to demands for rate reductions. Since the recent rapid decline in commodity prices and in the costs of living, the regulatory commissions throughout the country have been deluged with demands for reductions applicable to all classes of utility service. The contention has been that the reduced income of patrons has led to such a reduction in value of utility service as to warrant a reduction in rates. The factor of customers' ability to pay has thus been injected and skillfully dressed up in the garments of "value of service," so that the Little Red Riding Hoods in our midst would not be alarmed at its teeth. It is also alleged that the wicked utilities have maintained normal dividends, whereas other industries and mercantile establishments have been obliged to curtail or omit them. It is, of course, claimed that the lower cost of many other items in the family budget is a further logical reason for rate reductions.

These complaints ignore the fact, as pointed out by the writer in a recent monograph,[5] that a large proportion of the cost of utility service, which is assumed to be a pertinent factor, is made up of charges on investment that has accumulated over a long period of years under widely varying price levels, and of taxes, which have radically increased rather than decreased. Utility construction cost indexes, while lower than ten years ago, have decreased far less than the commonly quoted wholesale price indexes, and materially less than the cost of living. Furthermore, the cost of new money for long-term investment, as distinct from short-term borrowing and the yield on capital already invested, has not been low during the present depression, as sometimes claimed. The utilities have also wisely undertaken to maintain the highest practicable level of employment and wages to uphold purchasing power and encourage business recovery.

A STUDY of the sources of the agitations for reduced rates indicates that in many cases public utilities are being used as stepping-stones for political advancement. The agitators ignore the high cost to the utilities of preparing their defenses and of the investigations which the commissions are required to make, which costs must be borne directly or indirectly by the customers. They also seem to overlook the fact that public utility service of a particular kind ordinarily involves not more than one per cent of the average family budget, whereas food and clothing together amount to more than 50 per cent. It has been estimated that if all items in the family budget had been reduced in the same ratio as electric service, the average family would save about $100

[5] "Electric Rates and Cost of Living," reprinted from *Stone & Webster Journal*, June, 1932.



Existing Rates Do Not Always Cover the Cost of Serving Small Customers

"THE attack upon existing rates commonly centers, not upon the total charges for the service, but, rather, upon the maximum or 'top' rate. Too often the commissions, and sometimes the companies, have yielded to the popular clamor and reduced top rates, leaving other parts of the schedules unchanged. They thereby ignore the facts that previously existing rates did not fully cover the cost of serving many small consumers."

a month, or 36 times the average cost of electric service. Apparently competition has not worked as well as utility monopoly, indicating that our time-honored and zealously guarded competitive system might well take its turn in the limelight of investigation.

THE response of the commissions to recent demands for rate reductions has by no means been uniform. In general, the well-considered cases have embodied the same arguments as under somewhat similar circumstances ten years ago. They hold that if utilities are prevented from sharing in abnormal profits in times of prosperity, they should not be called upon to participate in losses during depression. The commissions believe it to be in the public interest that as far as possible utility revenues and credit should remain stable at all times.

Not all commissions have shared these views, and arbitrary rate reductions have been made, usually without well-defined opinions. In few cases has ability of customers to pay their bills been a direct and acknowledged factor. Some of these reductions have been enjoined by the courts because they would obviously deprive the utilities of a normal fair return upon the value of their properties. Supplementing the reductions ordered by the commissions, many others have been voluntarily made by the utilities with the hope of restoring business or curtailing its downward trend.

OUTSTANDING among recent commission orders for rate reductions is that of the Wisconsin Public Service Commission involving rates of the Wisconsin Telephone Company. The commission held hearings

which included exhaustive inquiry into economic conditions assumed to have a bearing on utility rates. The lengthy opinion accompanying the order disclaimed controlling consideration of the reduced purchasing power of telephone users, although much testimony on that point was presented by commission witnesses, and held that the 12½ per cent revenue reduction would not impair the company's credit or ability to make reasonable return to its security holders if adjustments were made in certain factors affecting the cost of service. Further reference to the extraordinary character of this case is unnecessary because it has been discussed at length in recent issues of this magazine.[6] The company did not share the commission's views as to the effect of the reductions, and they were subsequently enjoined by the courts.

If ability to pay for utility service, disguised or otherwise, is urged as a significant factor in any rate proceeding, it should be clearly distinguished from the concept of value of service considered herein. A customer who has used utility service and considered its cost reasonable but who can no longer afford it because he has lost his job, does not think of demanding continued service for the fifty cents left in his pocket any more than he would expect to buy a needed pair of shoes for that sum. Both cost more and are worth more. If to the inherent weakness of value of service as a measure of the reasonableness of rates there were added as a further factor the greater indefiniteness of ability to pay, the whole carefully reared structure of rates would be destroyed. Free service would be a logical result in many present cases, and the inevitable outcome would be public support or government ownership.

EVEN if the question of ability to pay is not stressed, the various reductions in utility rates, threatened or granted because of business depression, have raised questions of vital importance in regulatory practice: Should the stability of the public utility industry, so long an established regulatory policy, be abandoned and flexibility substituted?

If flexibility is substituted, to what extent should it go?

Assuming that the flexibility primarily centers about the rate of return and that 8 per cent is a proper average, should the range be between a 6 per cent minimum and a 10 per cent maximum, a 4 per cent minimum and a 12 per cent maximum, or a zero minimum and a 16 per cent maximum?

A further question may be raised as to the propriety of making effective such a radically different program of regulation during a depression when a reduced rate of return would be in order, thereby depriving the utilities of any opportunity to make advance provision for such contingencies. With reduced revenues, increasing taxes, and added investment incurred to aid in business recovery, the utilities are, with a few exceptions, without reserves to sustain their credit if distributable income is abnormally reduced. When prosperity emerges from "around the corner" and utility

[6] Prendergast, Wm. A.: "The 'Economic Emergency' as a Factor in Rate Making," September 1, 1932; Spurr, H. C.: "'Value of Service' as a Basis of Rate Making," September 29, 1932.

income has opportunity to accumulate beyond current needs, a program of sustained rather than of reduced utility rates would permit the accumulation of reserves properly available for stabilization in *succeeding* depressions.

PUBLIC utility securities have found increasing favor with savings banks, insurance companies, and trust funds because of the demonstrated stability of the business. Railroad securities, which formerly played a leading part in such investments, have lost much of their popularity and are being forced out of many portfolios through inability to conform to legal requirements or conservative standards. If the credit of public utilities is also so impaired that their securities are no longer eligible, fiduciary institutions will be driven largely to government obligations with their relatively low yield. This would mean a correspondingly lower return from savings and from trust investments and higher cost of all forms of insurance.

The compensating advantages of such procedure to the average householder, who is the principal object of solicitude, would be a reduction of a very few cents per month in cost of public utility service. Such reductions might be far more than offset by increases, current or ultimate, in other costs. In previous depressions public utilities have been permitted to maintain their rates and standards of service at approximately normal levels, and have thereby assisted in restoring prosperity in other industries. A policy which has functioned successfully under certain trying conditions would seem preferable to an experimental substitute under a repetition of similar conditions.

CERTAIN other phases of rate-regulating practice have long been the subject of criticism. It has been pointed out that existing methods really involve regulation of profits, with rates as a secondary consideration. A strict regulation of profits undoubtedly has a tendency to destroy the incentive which so far in public utility history has brought about continuing increases in efficiency of operation and expansion of service. The need of incentive has by no means been ignored by the commissions, but only a few of them have given it direct recognition through variable rate of return or otherwise. On the whole, the discouraging effect of strict regulation of profits has not had adequate attention, possibly because the original incentive momentum has not yet been suppressed to a disturbing extent.

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VARIOUS writers have from time to time suggested modifications in regulatory practice which would promote rather than discourage aggressive business methods. These suggestions point more and more toward a policy of direct fixing of reasonable rates without consideration of the resultant profits. As in the case of other phases of regulation, the idea of regulating rates *per se* is not new. The writer has always been impressed by the forceful, if not conventional, language of the British House of Lords in a case appealed from Canada in 1883, involving the International Bridge Company, from which the following is quoted:

> "It certainly appears to their lordships that the principle must be, when reasonableness comes in question, not what profit it may be reasonable for a company to make, but what it is reasonable to charge to the person who is charged. . . . Here we have got a perfectly reasonable scale of charges in everything which is to be regarded as material to the person against whom the charge is made. One of their lordships asked counsel at the bar to point out which of these charges were unreasonable. It was not found possible to do so. In point of fact, every one of them seems to be, when examined with reference to the service rendered and the benefit to the person receiving that service, perfectly unexceptionable according to any standard of reasonableness which can be suggested." (L. R. 8, App. Cas. 723, 731.)

Although the above views are neither recent nor controlling in the United States, they have been quoted with approval by our Supreme Court in at least one case, that involving the Kansas City Stock Yards, in a group now classed as public utilities. In this case the court said of the defendant:

> "Pursuing this thought, we add that the state's regulation of his charges is not to be measured by the aggregate of his profits, determined by the volume of business, but by the question whether any particular charge to an individual dealing with him is, considering the service rendered, an unreasonable exaction. In other words, if he has a thousand transactions a day, and his charges in each are but a reasonable compensation for the benefit received by the party dealing with him, such charges do not become unreasonabe because by reason of the multitude the aggregate of his profits is large." (Cotting *v.* Godard [1901] 183 U. S. 79, 46 L. ed. 92.)

SIMILAR views have been expressed in more recent cases, and it is well known that they are the foundation upon which the intricate structure of railroad rates has been built. A few years ago Professor Philip Cabot of the Graduate School of Business Administration of Harvard University began a discussion of this subject of direct regulation of rates, which has attracted much attention.[8] He has amplified and clarified discussions of earlier years by such eminent authorities as Charles Francis Adams and Arthur Twining Hadley. In his forthcoming book, "Public Utility Rate Structures," the writer briefly summarizes and comments upon Professor Cabot's contentions as follows:

> "A more revolutionary plan has been proposed by Professor Philip Cabot of the Graduate School of Business Administration of Harvard University. He proposes the abandonment of profit regulation and the substitution of direct regulation of rates. Professor Cabot contends that about 80 per cent of the sales of electric service are directly competitive with other services or substitutes, and that existing methods of regulation recognize that rates for such service must be based on competitive costs rather than the actual cost of the service which, he asserts, cannot be satisfactorily established.
>
> "With respect to both the competitive and noncompetitive classes, it is assumed that a varying degree of elasticity exists with respect to the sales of utility service, such sales increasing with reduction in price

[8] "Ethics and Politics," *Atlantic Monthly*, November, 1928; "Public Utility Rate Regulation," *Harvard Business Review*, April, 1929, and July, 1929; "Four Falacious Dogmas of Utility Regulation," PUBLIC UTILITIES FORTNIGHTLY, June 11, 1931.

No Practical Method Has Yet Been Developed for Deciding the Value of Utility Service

"No logical or practical basis for specifically determining the value of service has so far been developed. Such lack of any practical definition of value of service has, however, been no obstacle to demands for rate reductions. Since the recent rapid decline in commodity prices and in the costs of living, the regulatory commissions throughout the country have been deluged with demands for reductions applicable to all classes of utility service."

and decreasing with increase in price. Such elasticity is particularly pronounced with respect to major domestic requirements. An aggressive and unhampered management would logically so adjust its rates progressively downward until the point of maximum total profits had been reached although this procedure would involve a decrease in unit profits. Such a program would be equitable and in the interests of all parties concerned. The customer would obviously not increase his purchases at reduced rates unless to his advantage, nor curtail his purchases under higher rates as long as the service was worth its cost. The utility would be seeking justifiable maximum profits such as are sought in other competitive business."

A FEW weeks ago Professor Cabot responded to an invitation of the Public Utility Law Section of the American Bar Association, and read a paper entitled, "Rate Making and Rate Regulation," at the annual convention in Washington. This paper confirms and expands his earlier views on this important subject, and has provoked further discussion. He contends that rate making is a marketing problem and not one based upon existing costs. From that viewpoint a utility with a known history of business development should carefully study the trend of its revenue, preferably by classes of service. It should then make a careful survey of the existing new-business market and determine the revenue possibilities therefrom at rates which will be attractive to each type of service embraced therein. Presumably the rates necessary to attract additional business will be lower than prevailing rates, and the more of the prospective business that is obtained the lower the rates must be. All such reductions must apply not only to new business but to similar business already served. Such surveys permit the construction of revenue and cost curves at different rate levels, and a comparison of such curves with the trend of existing business will disclose a level of rates which will yield maximum profit from existing and added investment.

IT may appear that the upward trend of business under existing rates is so pronounced that further reductions, with the added investment required for new business, would not yield increased profits. If, on the other hand, business under existing rates has not measurably expanded, an analysis might disclose that lower

rates would yield greater profits, and the process should be continued until succeeding analyses indicate that further rate reductions would not yield added profits.

The extent of customer response to rate reductions obviously depends upon the degree of elasticity of the market. A static market, such as that for water service, would show slight advantages from reductions, at least those applicable to domestic and commercial service. On the other hand, electric, gas, and telephone services have a highly elastic market which, experience has shown, responds promptly to stimulus. If a market normally elastic becomes static through temporary curtailment of purchasing power, rate reductions would not yield the customary volume of new business and would, therefore, be inconsistent with the principles of regulation under discussion.

THIS method of rate regulation was recently urged before the Connecticut Public Utilities Commission by Samuel Ferguson, the well-known pioneer in rate and other utility practices, in behalf of a small electric company of which he is president. He contended that the regulation of rates *per se* would offer an outstanding incentive to progressive management, and result in lower cost and steadily increasing use of service. The results of voluntary efforts in this direction were offered as convincing proof of the effectiveness of the plan.

The direct regulation of rates under this plan involves several important considerations. Of primary importance is the accumulation of data in considerable volume relating to the trend of business under different rate levels, with careful consideration of influences which may divert such trend from normal. The analysis of undeveloped markets and the fixing of rates at which these markets can be served also require salesmanship of high order.

It is assumed that the initiative in rate changes will rest with the utilities, that they will make frank disclosures of their studies to the regulatory authorities, and that these authorities will have adequate business judgment, breadth of vision, and freedom from political influences to permit their acceptance of carefully developed and economically sound utility programs. Such assumptions are not now warranted in all cases. The commissions have too long been accustomed to regulate rates through rules or mathematical formulae, the application of which yields the required revenue, to abandon abruptly this method for one which may not be clearly understood and which may encounter political opposition.

IT is well known that the budgets of regulatory commissions are in most cases too small to attract outstanding executive ability and to provide adequate staffs. The total of the administrative budgets of all the state commissions is only about $7,000,000 a year. Obviously a substantial increase in expenditures is necessary if a more intricate system of regulation and more complete records of utility performance are to be substituted for existing routine procedure. To the extent that the commissions are free to follow their best judgment in rate cases, the proposed new method can

be made effective. At best, however, its progress should be regarded as evolutionary rather than revolutionary.

REGARDLESS of other progress in rate-making reforms, one preliminary step is needed if we accept the doctrine that rate reductions should have stimulated business as an outstanding objective. The attack upon existing rates commonly centers, not upon the total charges for the service, but, rather, upon the maximum or "top" rate. Too often the commissions, and sometimes the companies, have yielded to the popular clamor and reduced top rates, leaving other parts of the schedules unchanged. They thereby ignore the facts that previously existing rates did not fully cover the cost of serving many small consumers, and that larger consumers are unjustly saddled with an added burden of loss.

Exhaustive studies of the effect of rate changes have clearly shown that reductions in top rates have very much less stimulating effect upon usage than either reduction in consumption, to which top rates apply, or reduction in follow-on rates, the last-named being most effective. Ignorant or prejudiced warfare against top rates should be officially ignored, unless it can be shown that such rates are in fact excessive, and attention should be diverted to other possible reductions, which will develop new business to the mutual advantage of consumers and utilities. Any program which fails to recognize such advantage will in the long run be a failure in the utility business as well as elsewhere. In fact, it is quite time that the illusion that the public utility business is radically different from all other business was given a respectful but tearless burial. Financial success should no more be regarded as iniquitous in the utility business than in any other enterprise.

THIS article has briefly traced the well-worn path of rate regulation to a possible parting of the ways. We may continue along the same path, gradually making it smoother and straighter, or we may turn in another direction where, following the experience of other business, we shall encounter more rugged scenery with pronounced hills and valleys. A third path also beckons, along which we may cast aside our earlier notions about valuation and rate of return, and look only to the reasonableness of the rates themselves. It may be contended that the second and third paths lead in the same direction because both recognize value of service as a goal. There is, however, the vital difference, which has already been noted and which should be further emphasized, that the second path ignores market elasticity whereas the third relies upon it as an essential factor.

If the more conservative regulatory judgment prevails and the second path is rejected, there still remains a critical choice, for the two remaining paths are apparently widely divergent. It may be that this divergence is more apparent than real, and that we may proceed for a time along the beaten highway and yet ultimately find ourselves traveling along a new route through more fertile fields.

THE PERSONNEL REQUIREMENTS OF

The State Commissions

An analysis of the varying standards and qualifications established by the different states—with some suggestions for raising the efficiency of commission regulation.

By DR. WILLIAM E. MOSHER AND DR. FINLA G. CRAWFORD

THE quality of administration of a public utility commission is determined by the adequacy of authority under which the given agency functions and the character and competency of the personnel. Laws may be partially or wholly annulled to all practical intents and purposes if the personnel is not equal to its task.

During the past few years a tendency has been noted in state governments to rely upon executive appointment rather than popular election to fill many important governmental posts. This tendency is accounted for by the popularity of the short ballot and the increasing confidence in the efficiency of executive leadership. It is not surprising, therefore, that the appointive method of selection of public utility commissioners is relied upon in a majority of the states. This is generally recognized as a more progressive policy than that of popular election. In 1929 Oregon substituted gubernatorial appointment for election. The reports from field investigators suggest that several other states may soon follow in Oregon's footsteps.

Appointive commissioners are free from the responsibility of spending time and money in periodic and arduous campaigning. Elective commissioners either may be good political campaigners, or, if they lack this capacity, they may be carried into office on the party ticket, without having in either case those qualifications required in a competent public service commissioner.

Most elective commissioners are found in the southern states. Election is generally by popular vote. The exceptions are South Carolina, where the commissioners are elected by the legislature, and Virginia, where the general assembly selects by a majority vote. In addition to the southern states, commissioners are elected in the states of Iowa, Wisconsin, Minnesota, New Mexico, North Dakota, South Dakota, Nebraska, and Montana.

All other states have appointive commissioners.

Most railroad and utility commissioners consist of three members. Exceptions are the states of California, Georgia, Indiana, Massachusetts, Michigan, Missouri, and New York, each of which has five members and the state of Oregon which now has a single commissioner. Illinois, Pennsylvania, and South Carolina have commissions of seven members. In Nevada, the state engineer serves *ex officio* as the third member of the public service commission. Similarly in the District of Columbia, the third member is the District Engineer, an officer in the Engineering Corps of the Army.

In the judgment of the writers the number of members should be three or five, depending on the number and scope of utilities subject to regulation in the given state. In such states as California, Massachusetts, New York, and Pennsylvania, it would be practically impossible for three members to handle the mass of hearings, interpret the evidence, and reach sound conclusions. In order to facilitate hearings and reduce the traveling expenses of a large number of witnesses appearing in contested cases in the course of a year, it is clearly desirable that hearings should be held in different sections of the state. When the state covers a wide area this requires the setting up of several districts and thus a number of commissioners.

Five commissioners would appear to be a maximum number desirable for the larger and more populous states.

A series of requirements and qualifications and restrictions are prescribed for the holding of office. These cover such matters as age, political status, bipartisan requirement, previous experience, residence, oath of office, bond, and "disqualification for interest."

Thirty-nine states and the District of Columbia require each railroad or utility commissioner to subscribe to the constitutional oath of office before official appointment. Connecticut, Iowa, Kansas, New Hampshire, New Jersey, Tennessee, West Virginia, and Wisconsin are the exceptions.

Age qualifications hold in some of the states. Commissioners must be at least twenty-five years old to be eligible for office in six states,[1] while thirty years is the minimum age limit for a commissioner in eight jurisdictions.[2] Montana applies the general state qualification that no person can hold a civil office in the state unless twenty-one years of age.

Twenty-eight states provide that their commissioners be qualified electors before holding office, while North Dakota requires that commissioners be "state electors." [3]

In thirty-nine of the states and in the District of Columbia, geographical location is not specified as a qualification for commission membership. On the other hand, the Alabama law provides that no two commissioners can be selected from the same congressional district. Arkansas is divided into three railroad commission districts, with one commissioner elected from each. The Colorado law specifies that no two commissioners shall be residents of the same judicial district. Kentucky and South Dakota are districted, with one member elected from each of the three divisions. Louisiana specifies that commission-

[1] For all footnotes, see page 98.

ers must be selected from each of the three congressional districts. In Mississippi commissioners are elected from each of the supreme court districts. South Carolina is divided into seven districts, with a commissioner appointed from each by the state legislature.

Such restrictions seem uncalled for. Commissioners should represent the state as a whole instead of particular districts, sections, or precincts. Commission control should not be influenced by particular local or district issues. Under such a distribution there is always danger that one section will be played off against another.

PARTY affiliation is a further requirement for appointment in a number of jurisdictions. In several states, it is provided that the commission shall be bipartisan in its make-up, to assure representation of the minority party. In Indiana, the law declares that only three of the seven commission members can be of the same political party. The Nevada law reads: "Not more than a majority of all the commissioners shall be members of the same political party." Such a law applies in Utah, Ohio, and New Jersey as well. The remaining states lack such requirements.

In too many states commissions, whose members have been selected because of political connections, have been more or less continuously subject to the influence of politicians and party leaders. As was amply demonstrated in the investigation of the Federal Trade Commission, relations with the latter have been assiduously cultivated by the utility interests.

These provisions emphasize a factor that should be entirely divorced from utility regulation. The commission is an administrative arm of the legislature. Its policies are prescribed in legislative acts. If politics are to enter into the situation, as they properly may, the committee rooms and floors of the legislative bodies afford the opportunity for political manœuvering and decisions. The principle will be accepted without argument that the commission itself should be entirely aloof from politics.

IF there were reasonable appreciation of the varied qualifications requisite for the office of a commissioner of public utilities, all of the above restrictions might be done away with advantageously. The office calls for a combination of legal, engineering, accounting, and administrative training, together with personality and sound character—a combination that results from natural endowment and professional training and one that can be developed only by years of experience in utility regulation itself. If the office of commissioner were once recognized as a high calling and a real profession, as it indisputably should be, "political availability," residential restrictions, and state citizenship

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would be consigned to the limbo of forgotten things and appointing authorities would cast about for qualified commissioners, just as they have done in a few progressive states in filling such other professional administrative positions as those in education, charities, correction, and public health.

In harmony with the above analysis, some states have recognized that various types of training or experience should be represented on the commission, and, therefore, specify that one member of the commission must be a lawyer, or an engineer, or in some cases, a person familiar with railroad transportation.

For example, the Nevada law provides that one commissioner must be familiar with the operation of railroads; one with general knowledge of fares, tolls, charges, and so on, and the third member must be the state engineer.

The Michigan law reads: "One commissioner shall be an attorney experienced in the law relating to common carriers; the others shall have knowledge of traffic and transportation matters."

The Virginia law requires that at least one commissioner shall have the qualifications prescribed for judges of the supreme court of appeals. One commissioner in West Virginia must be a lawyer with at least ten years experience, and in Wisconsin one commissioner must have a general knowledge of railroad law.[4]

The remaining state laws prescribe no special qualifications of this type.

In view of the wide range of qualifications for the office of commissioner, to prescribe detailed specifications for individual appointees in the law would not appear advisable. There are few men who would be seriously considered for appointment who would not qualify under one heading or another. For example, administrative experience or ability, so requisite for the position, would lend itself to very broad interpretation, however carefully the law on this requirement might be drawn. A host of men would be covered under the requirement of legal, accounting, engineering, or some utility experience, any and all of which are desirable in a potential appointee. So far as the laws on this subject go the most desirable qualification, that of actual experience in commission regulation, has not been prescribed in any state.[5]

It is our opinion, therefore, that the law on this subject should be broadly drawn, reliance must finally be placed on the discretion of the appointing authority and the intelligence of public opinion with regard to the suitability of appointees to the commission.

There is no doubt that too little attention has been paid to the qualifications of commissioners. Under the elective system qualifications of a technical or semitechnical nature necessarily play a secondary or an entirely subordinate rôle to vote-getting ability. Under the appointive method utility commissionerships are looked upon all too often as political plums. Although governors would hesitate to nominate men to this position who do not meet fair standards of intelligence, personality, and business integrity, the public, realizing neither the technical requirements of the position nor the

Number of years served by commissioners, 1915–1929

NUMBER OF YEARS SERVED BY COMMISSIONERS, RETIRED, 1915–1929

Years served	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Appointed number	46	56	42	55	24	24	10	6	3	2	3	2	1	1	
Elected number	11	26	8	21	4	15	8	9	2	5	2	2	1	1	

NUMBER OF YEARS SERVED BY INCUMBENT COMMISSIONERS, 1929

Appointed number	9	9	13	16	8	12	4	6	4	5	5	3		1	6
Elected number	2	6	9	7	2	8	3	9	1	4		1	2	1	

great power wielded by utility commissioners, accepts appointments with a surprising degree of equanimity. In only ten states were evidences found of an alert public opinion that would impose wholesome restraint on the appointing authority.

THERE are three general provisions respecting restrictions on relations with utility companies:

1. No commissioner shall have pecuniary or other interest in any public utility subject to the jurisdiction of the commission. In forty-one states and the District of Columbia the laws embody some such provision. No restrictions of this sort are imposed in Arkansas, Connecticut, Missouri, Pennsylvania, Washington, and Wyoming.

2. No commissioner shall hold any other office or engage in any business or occupation inconsistent with his duties. Slightly less than half the states do not prohibit such occupation.[6]

3. No person in the employ of or holding any official relation to any person, corporation, or utility subject to regulation by the commission shall be eligible for the office of commissioner. The laws of twenty-one jurisdictions *do not* disqualify for such reasons.[7]

In addition the following exceptional provisions are to be noted:

In Illinois no commissioner shall accept gifts from a utility or solicit an appointment.

In Maryland and Montana no receiver of public money shall be eligible to hold any office of profit or trust under this state until he shall have accounted for and paid into the treasury all sums due by him.

No commissioner or employee of the commission in Maryland or Mon-

tana shall solicit from any utility the appointment of any person to any position, and no utility shall offer to any commissioner or employee any appointment or give reduced transportation to which the public generally is not entitled, nor any gift of any kind.

THE prohibition of official or unofficial relations with a utility company subject to regulation, including those of stockholder, is so obviously justified that no supporting argument is called for. Equally justified, but perhaps less obvious, is the restriction on participation in political campaigns or party organization. Because of the character of our current political behavior, that to such a considerable extent may be based on the giving and receiving of favors, it is apparent that public service commissioners should be entirely free of the temptation either to give or to accept favors. If their code of ethics does not do so, then the law should debar them from political activity of any sort. It is surprising that only three states (Maine, Idaho, and West Virginia) have taken cognizance of the dangers of political activity on the party of public service commissioners. Other states might well profit from their example.

IN view of the absence of standard qualifications for the office of commissioner and the consequent importance of experience in the office itself, the question of length of tenure looms larger than it would otherwise do.

A 6-year term of office is prescribed by law for most state commissioners. Commissioners in South Carolina, Illinois, and Arkansas serve but two years. Commissioners of the District of Columbia serve three years. Four-year terms are designated in ten states.[8] Massachusetts commissioners hold office for five years. Members of the Maine commission serve seven years, while the public service commissioners in New York and Pennsylvania have a 10-year term. The members of the Washington commission hold office at the pleasure of the governor.

In most of the states, continuity of policy is brought about by the use of over-lapping terms. Thus in nineteen states one term expires every *two* years.[9] In Kansas and Massachusetts the term of one commissioner expires each year, while four other states have over-lapping terms of office.[10]

During the period from 1915 to 1929 a total of 536 men served in positions of the utility commissions in forty-seven states. Of these, 177 were chosen by popular election and 359 were appointed by the governors of the states. If there had been no reappointments and no reëlections, *i. e.*, a complete turn-over at the end of each regular term, there would have been a total of 571.

On the face of these figures, it would appear that the commissions had served as training schools, but that little effort had been made to utilize the experience gained by the incumbents through reëlections or reappointments. On account of the complicated and technical character of the duties of a commissioner, the position is tenable that it will require three or four years for the typical appointee to acquire the experience and information requisite for the proper handling of the responsibilities of the office.

The data show that the average length of service for those retired in the period covered was exactly four years. In other words, the major part of the period of service has been devoted to learning the position.

Of the 177 elective commissioners 66, or 40 per cent, were reëlected for one term or more. If the 4-year criterion is applied to those who retired from 1915 to 1929, it appears that 66 or over half of this group of elective commissioners served four years or less.

Of the 359 members serving on appointive commissions only 68 were reappointed to a second term of office. Thus more than eighty per cent of those appointed to these commissions serve one term or less.

Again limiting attention to those retired in the years 1915 to 1929, 199 of the total number of 275 were in office for four years or less. Of those in service in 1929 when the data were compiled, the tenure of 47 commissioners was four years or less, while 56 had served over four years.

In the table on page 94 is brought together the information as to the number of years served by all those who were in office from 1915 to 1929. This is perhaps the most significant body of data brought together in this article.

In view of the complex nature of the duties of the public service commissioner already referred to and the desirability of acquaintance with the internal affairs of a wide range of the utility companies under the jurisdiction of the commission, all of which can be acquired only after years of service, the tenure of office should not be subject to any such limitations as are found in the laws of most states. Ten years is none too long a period for the term of appointment. Furthermore, reappointment or reëlection should be an accepted procedure, such as is quite unusual according to the records just cited.

In the Diplomatic Corps of the State Department and some professions, fifteen years of service has generally been recognized as the mile-post denoting a career. Such a term of years may appear too long, considering the insecurity of the office of public service commissioners due to such factors as politics, the age of commissioners at time of selection, and the demands of private business.

For this reason, continuous service for at least eleven years may be considered as a condition of a "career" for public service commissioners. Such a term would be one year more than the longest regular term of any commissioner. The members of state

¶ "If *the office of commissioner were once recognized as a high calling and a real profession, as it indisputably should be, 'political availability,' residential restrictions, and state citizenship would be consigned to the limbo of forgotten things and appointing authorities would cast about for qualified commissioners.*"

commissions meeting this requirement may be classified as *"career men."* An analysis of the records of those in office in 1929 shows that there were eleven "career men" among the elected and seventeen among the appointed commissioners. In other words, of the total number of 165 in office in 1929, 28 might be looked upon as "career men." Considering the importance of experience as an essential part of training for the responsibility of the office, this is a lamentably small percentage.

BECAUSE of the reported allegation that public service commissioners are "utility-minded," as evidenced by the fact that many of them are appointed to positions in utility companies after retirement from the commission, an effort was made to discover how frequently such employment was accepted by former officials. Complete data are not available. It was found, however, that twenty-nine were employed by utility concerns after leaving the commission: ten of the New York commissioners; three from California and Wisconsin; two from Maine and Missouri, and one each from the following states entered the employ of utility companies: Colorado, Kansas, Illinois, North Dakota, Oregon, Michigan, Minnesota, Oklahoma, and Pennsylvania.

Although available reports are far from exhaustive, surely no such generalization is warranted as is so frequently heard. It would be much more applicable to those on the technical staffs of the public service commissions. This is not so much evidence of "utility-mindedness" as of the desire to improve one's economic status which is none too good because of the very moderate salary scale of public officials on the payrolls of state governments.

BOND is required of commissioners in twenty states.[11] The amount varies from the $5,000 prescribed in Iowa, Ohio, and South Dakota to $50,000 in Nebraska and the District of Columbia (citizen members only). This requirement serves no useful purpose, and so far as has been discovered has not contributed in any way toward stimulating a more honest performance of the duties of the office or toward protecting the interests of the state.

Although the scale of salaries paid commissioners will bear comparison with those paid other state officials, the list shows that they are inadequate to hold men of good caliber for long periods. In twenty-four states less than $5,000 per year is paid some, if not all, commissioners. Such limitations unquestionably and unfortunately restrict the field from which desirable candidates may be chosen.

The conclusions to be drawn from this analysis are as important for effective regulation as any reached in the course of this investigation. The position is defensible that utility regulation might be improved one hundred per cent under existing statutes if trained and professionally minded men were appointed or elected to the commissions. Such a condition will not be realized until:

1. Political considerations are completely eliminated in their selection:

2. Terms of office are extended to eight or ten years with reappointment

in case of satisfactory service, accepted as a matter of course:

3. Salaries are increased sufficiently to attract men of more than average ability.

The roster of public service commissioners indicates the possibilities of attracting real professionals to this position. Some commissioners have made notable contributions to the development of the art and science of utility regulation. It is not surprising that under existing circumstances such commissioners are the exception rather than the rule. Extension of jurisdiction, to meet the changing conditions in the industry, and increasing appropriations in view of expanding duties are but palliatives as compared with the basic remedy of making public utility commissioners a professional class, conscious of their great responsibility, and loyally devoted to furthering the public interests.

Footnotes

[1] Maryland, Mississippi, Missouri, North Dakota, South Carolina, and Tennessee.

[2] Arkansas, Georgia, Kentucky, Nebraska, New Jersey, Oklahoma, Pennsylvania, and Utah.

[3] Arkansas, the District of Columbia, Kentucky, Maryland, Missouri, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, and West Virginia exercise resident requirements varying from three to five years. Texas requires eighteen months of residence in the precinct from which the commissioner is chosen.

[4] Francis X. Welch has made a study of the previous callings of the present members of the commissions. He finds the following distribution on the basis of callings: 79 lawyers, 13 engineers, 5 journalists, 29 business men and bankers, 17 farmers, 12 industrial workmen, and 9 government employees, giving a total of 164. PUBLIC UTILITIES FORTNIGHTLY, Vol. IV; No. 13, Dec. 26, 1929.

[5] Since only 9 of the 164 present incumbents were former government employees, it is safe to assume that experience on regulatory bodies plays practically no rôle in determining selection for the commission. A review of the records of all commissioners serving from 1915–1929 shows that seven former secretaries were later appointed to their respective commissions. See appendix.

[6] Ala., Ariz., Calif., Conn., Fla., Ga., Ind., Iowa, Mass., Mich., Miss., Mo., N. M., N. Y., N. C., N. D., S. D., Va., Wash., W. Va.

[7] Ala., Ariz., Ark., Fla., Ga., Idaho, Ill., Ky., Mich., Minn., Neb., Nev., Okla., Ore., S. C., S. D., Tenn., Tex., Wash., Wisc., and District of Columbia.

[8] Ala., Fla., Ind., Iowa, Kan., Ky., Mich., Miss., Nev., Ore.

[9] Ariz., Conn., Idaho, Md., Minn., Mont., Neb., Nev., N. H., N. M., N. Y., N. C., Ohio, Okla., R. I., S. D., Utah, Va., Wisc.

[10] Pa., Ala., Mo., S. C.

[11] Ariz., Ark., Calif., Ill., Ind., Iowa, Kan., Minn., Miss., Mont., Neb., N. M., N. D., Ohio, Ore., S. D., Tenn., Utah, Wash., and the District of Columbia.

What Does Technocracy Mean to the Public Utilities?

WHETHER or not our economic and social problems are to be solved by the group of "technocrats" who have so amazingly fired the popular imagination with their viewpoints, or whether they will prove to be merely the exponents of a passing cult, certain it is that the utility industry in general and the electric power industry in particular are destined to play important rôles in the consideration of their contentions. In the next issue of this magazine will appear the first of a series of articles on this subject by FRED C. KELLY, who will point out just what the technocracy doctrine presages for the power utilities so far as the physical and technical expansion of their facilities is concerned, and, second, what the doctrine presages so far as their economic services and financial structures are concerned.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

WEBSTER'S DICTIONARY

"Utility man. An actor who performs minor parts and does odd jobs."

L. A. DOWNS
President, Illinois Central System.

"The greatest obstacle of all along the road to recovery is excessive taxation."

WALTER RAUTENSTRAUCH
Mechanical engineer.

"Most of the technocrats are wholly opposed to the tenets of Communism or Socialism."

GARDNER COWLES, SR.
Reconstruction Finance Corporation.

"The force of agitation for public ownership is intensified by transferring regulation from state capitals to Washington."

GEN. HARVEY H. HANNAH
Chairman, Railroad and Public Utilities Commission of Tennessee.

"There is no field in which lawmakers . . . can find to employ the best that is in them to bring real blessing to all the people of this Republic, than in the field of public utility regulation."

GEORGE W. ANDERSON
Judge, U. S. District Court of Appeals.

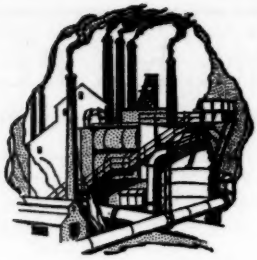
"In general, government business is managed, both by the Federal government and by most state and municipal governments, on sounder and less wasteful lines than private corporation business."

W. C. MULLENDORE
Executive vice president, Southern California Edison Company, Ltd.

"Notwithstanding all the emphasis upon the supposed monopoly enjoyed by electric utilities, it was never more evident than it is today that they have about as much of a monopoly as does a single manufacturer of cement, automobiles, or other manufactured products."

FELIX FRANKFURTER
Professor of Law, Harvard Law School.

"In the main, the public as well as the utilities have suffered from too many mediocre lawyers appointed (to the state commissions) for political considerations, looking to the public service commissions not as a means for solving difficult problems of government, but as opportunities for political advancement or more profitable future association with the utilities."



A New Four-point Program for Regulating the Oil Industry

A proposed extension of the activities of the utility commissions of the oil-producing states

By NORTHCUTT ELY

ASSISTANT TO THE SECRETARY OF THE INTERIOR; CHAIRMAN OF THE TECHNICAL AND ADVISORY COMMITTEE TO THE FEDERAL OIL CONSERVATION BOARD

PUBLIC service commissions of the oil-producing states, for more than sixteen years, have been grappling separately with the problem of saving oil and gas from wasteful overproduction—a problem in which the nation is vitally interested but for which no solution has been found in any power possessed by the Federal government.

Oil and gas stand alone among all natural resources in three respects: First, "offset drilling," necessitated to avoid capture of one landowner's oil by his neighbor, forces oil into the market with little regard to price; second, the total quantity of oil that can be recovered depends on how much gas is saved underground to force the oil to the well; and third, a new flush field is, until its gas "head" blows off, the cheapest producing unit, although the most wasteful. In no other industry is the wasteful producer the low-cost unit.

It is, therefore, not surprising to find in more than twenty states legislation authorizing some kind of a regulatory body to supervise in some way the production of oil; although in none of them is oil a public utility. Some commissions or officers are authorized to do little more than see that productive strata are protected; some can prevent the waste of gas; some can restrict the whole state's oil production to a figure based either on the market demand or on the quantity producible without physical waste, and apportion that "allowable" production among the fields of the state; some can only apportion production among wells in a single field, without regard to other fields' performance. But the term "proration" is loosely used to cover all phases of apportion-

ment of excess supply. There are a half-dozen states which directly regulate production in one manner or the other.

For a decade there has been a growing realization that this regulatory problem transcends state lines.

One state may protect its landowners and operators from depression of values occasioned by cheap wasteful production from a new field, but cannot prevent a similar field in the next state from blowing its head off and forcing its oil into the common market, already saturated. And the natural tendency of a state regulatory body is to refuse to hold back its own citizens' production if the only effect is to yield their market to the next state.

While in no state has oil production been held to be a public utility, the state's powers to regulate oil production within its own borders, to prevent waste and protect what are called the correlative rights of a field's owners, are well tested and very broad. The weakness of the present system lies not in the character of the state's authority, but in its geographical limitations.

How, then, may the economic pressure from new flush fields be dealt with by the whole region affected, unhampered by the state lines which mark off and halt each state's police powers?

Control of production by common action inside the industry, broad enough to include an effective number of fields, has been proposed but has not been widely effected, because of practical difficulties and the influence of the antitrust laws. Direct control by the Federal government has been proposed but has met with little favor because, even if authority for it were found, it would necessitate scrapping the state machinery already developed and would entail much delay. Some proposals for indirect Federal control through pipe-line regulation are pending, but have not gathered great headway.

There is a third method, however. The states may, under the Constitution and with Congress' approval, enter into agreements to coördinate their powers. The proposal for interstate coöperation offers a great advantage because it can grow directly out of proven powers and existing conservation agencies.

Events long have been shaping themselves to this end.

In 1922 Justice Brandeis commented on the need for an interstate public service commission if gas production was to be fairly apportioned among consuming states.

In 1926 the Federal Oil Conservation Board, in its first report, pointed out that if any state was to be entirely successful in its conservation efforts it must have the coöperation of other producing states, and suggested an interstate agreement for such purpose.

In 1929, when the American Petroleum Institute's voluntary agreement plan came before the board and encountered there the Attorney General's warning of litigation under the antitrust laws, the board suggested to the Institute that it go to the states as a source of authority and seek their coöperation through an interstate agreement. Ray Lyman Wilbur, Secretary of the Interior, often has called

the attention of oil producers to the possibilities that lie in interstate action.

IN the spring of 1931, confronted by the crisis precipitated by East Texas, the governors of the Mid-Continent region initiated the Oil States Advisory Committee, for the purpose of ultimately bringing the states into some form of interstate agreement. In September, 1931, it will be recalled that the states of Oklahoma, Kansas, and Texas, through their governors and regulatory agencies, entered into an informal production agreement. The program of the Oil States Advisory Committee, presented to a meeting of the Federal Oil Conservation Board, received its encouragement.

Over a 2-year period the oil industry has actually experimented with the rudiments of a system of national planning, in three phases:

(1) Committees of economists and engineers appointed by the Federal Oil Conservation Board and by the American Petroleum Institute have coöperated in periodically forecasting the demand for the refined products of crude oil and in estimating the crude production necessary to meet them. The Federal Oil Conservation Board has published six of these forecasts, beginning with the 1930 summer period.

(2) During 1931 and 1932 the Oil States Advisory Committee, representing ten governors, has taken the recommendations of the two committees, modified them, and broken them down into production quotas for the various states.

(3) These quotas in turn have been followed with more or less care by the local regulatory agencies.

The result has been a loosely fitted chart which has steered the oil industry out of chronic overproduction into approximate balance. The time appears to be approaching when this growing movement toward coöperation should be put on a formal basis through an interstate agreement. Legislation to authorize such an agreement is pending in Congress and has been favorably reported by a House Committee.

THE Constitution of the United States permits agreements among states to such end, subject to the consent of Congress. On fifty-seven occasions Congress has authorized interstate agreements, generally as a method for collective solution of various regional problems. Of the fifty-seven compacts which have been authorized by Congress, forty-seven have also been authorized by one or more of the states concerned, and thirty-four have become finally effective.

These compacts have covered such matters as fixing the boundaries of the state's jurisdiction; conferring concurrent jurisdiction over a com-

¶ "WHILE *in no state has oil production been held to be a public utility, the state's powers to regulate oil production within its own borders, to prevent waste and protect what are called the correlative rights of a field's owners, are well tested and very broad.*"

mon area, such as common waters; conferring reciprocal privileges beyond state lines; authorizing or permitting joint construction of interstate works; agreements for joint police administration of adjacent areas; agreements to apportion the waters of a river; and other regional problems.

With this background, let us turn to the specific proposal for an interstate agreement for the conservation of oil and gas. In general, this proposal calls for an agreement binding the states to carry out certain policies within their own borders but giving none any authority within the boundaries of another. It is a plan for common action by the existing commissions, not for creation of a supergovernment.

I. SPECIFICALLY, the interstate agreement contemplated in this discussion would aim at four objectives.

The first of these objectives is the creation of an interstate fact-finding agency. It would make periodical forecasts of the demand for domestic consumption and export, estimate supply, ascertain the quantity of oil producible without waste, and allocate production quotas among the states. This agency, composed of state representatives who might be selected from members of the various state public service commissions, would perform functions of an advisory character, and would have no administrative powers. It would supplement and not supplant the existing state agencies. Its estimates and forecasts would be transmitted to the states for their individual enforcement and to Federal authorities for action with reference to imports, outlined below. It is contemplated that this interstate agency would be aided by Federal participation in some form for the protection of interstate commerce and of the consuming states. That participation might take either the form of membership in the interstate agency, or might be in the form of concurrence in the agency's findings by some Federal authority in so far as these findings affect interstate and foreign commerce.

2. THE second objective would be a commitment by each state to adjust its production in accordance with the allocation recommended by the joint interstate agency so far as the state Constitution will permit. It is contemplated that the state would carry out this commitment under its own laws and by means of its own public service commission. In other words, the compact would adopt the existing machinery for actual enforcement.

3. THE third objective would be an authorization to the interstate agency to recommend uniform conservation laws, but without a commitment on the part of the states to adopt them. There is a growing movement toward recognition of the common ownership of a pool's "reservoir energy" which lifts the oil to the surface, and legislation for further protection of that asset should be encouraged. In this respect the interstate agency would be a clearing house for the gradual improvement of conservation legislation. It might also perform some clearing-house functions relating to gasoline movements, in order to check tax evasion. Its members might also be authorized to

The Four Objectives of the Proposed Interstate Agreement:

1. *The creation of an interstate fact-finding agency, perhaps selected from members of the state public service commissions;*
2. *A commitment by each state to adjust its oil production in accordance with the allocation recommended;*
3. *The authorization of the interstate agency to recommend conservation laws;*
4. *Federal regulation to accord with the forecasts of demand.*

coöperate with Federal officials in the negotiation of international production agreements for protection of our export markets.

4. Federal regulation of imports to accord with the forecasts of demand would be a final requirement. It is contemplated that upon certification by the interstate agency of its estimated demand for the ensuing period of, say, six months, and concurrence by proper Federal authority, that the Federal government would restrict imports for that period to accord with the estimated demand. The method of controlling imports, whether by a tariff or a quota system, would be provided in the Act of Congress authorizing the compact.

The above, in brief, are the four principal objectives. It will be noted that this plan is a combination of several of the methods which have been used in other interstate compacts. The basic idea of a limitation enforced by each state separately, but in accord with a common plan, is close to that of the water allocation compacts of the western states, notably the Colorado River Compact, whereby each member agrees to limit its appropriations from the common stream, and each enforces the limitation within its borders. The present plan departs from the water compacts, which fix a permanent allocation, by providing instead for the periodical readjustment of the allocation by an interstate agency.

Precedent for a permanent joint commission will be found in a number of the New York agreements. Unlike the New York commissions,

the one proposed here would have fact-finding and not administrative powers. In that respect it is like those boundary agreements which call for a joint surveying commission. The proposed body, in recommending uniform legislation from time to time, would perform some of the functions of the present commissioners on uniform laws. The states in enacting them would be following the pattern of the compacts for establishing uniform fishery laws.

The net result would be a system insuring the stability of investments through assurance against erratic production swings; it would afford sufficient flexibility to meet changing conditions; it would gradually tend toward uniformity in conservation methods. Above all, it would ensure the nation against the premature exhaustion of its oil reserves through the wasteful management of competing flush pools.

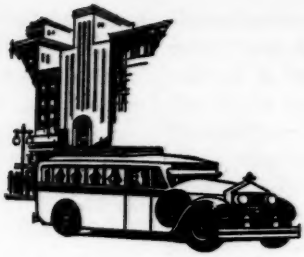
CONGRESS might take the initiative in authorizing the negotiation of an interstate oil compact, outlining objectives such as those above. Such a bill is actually pending and has been favorably reported by the House Judiciary Committee. State legislatures might thereafter authorize commissioners representing them to meet and draft a compact, subject to ratification by the states. The compact might be drafted and signed by state commissioners. Or, without the signature of a contract, the states might enact uniform reciprocal statutes drafted by their joint commissioners. In either case, the steps are plain and the method is not difficult. If there is a will toward a solution, this one can be accomplished in a matter of months. The procedure, as recognized by the leading cases, is quite flexible.

STATE conservation laws have endeavored to eliminate the impulse toward wasteful production necessitated by our prevailing theories of ownership of oil and gas. The "capture" doctrine is a wholly artificial factor, intervening in the operation of the laws of supply and demand. The proposed compact would help to eliminate a second artificial factor. That factor is the impulse toward wasteful production, occasioned by the abnormally low production costs of wasteful flush fields, and the resulting depression of values of older pools of settled and orderly production.

The method suggested adopts and utilizes the existing conservation machinery without involving the anti-trust laws nor any constitutional questions as to Federal authority. It is proposed, however, to proceed with the coöperation of the Federal government, evidenced not only in its approval of the compact but in the enforcement of it as affecting importations.

What is proposed is a method whereby these oil-producing states may collectively exercise their police power in trust for the nation—a nation which is without such police power and which must look to them for the protection of an irreplaceable national asset.

WHAT *can the utility industry and the state commissions expect from the coming Congress? Read the answer by* HAROLD BRAYMAN, *the Washington correspondent, in the next number of this magazine.*



The New Curb on the Contract Carrier

A recent decision of the Supreme Court of the United States that is of outstanding importance in the field of regulation, and which finally settles the troublesome problem of how to control the competitors of the railroads.

By HENRY C. SPURR

THE troublesome question of what to do with the contract carriers for hire who are swarming the highways has at last been settled by the recent decision of the Supreme Court in the Stephenson Case.

This decision is, therefore, of outstanding importance in the field of regulation.

A CONTRACT carrier for hire is a technical legal term usually applied to the owner of a motor truck who contracts to carry the goods of one or more customers at a rate agreed upon with them, but who does not hold himself out to carry goods for anyone else. If he put his truck at the service of the public, he would be a common carrier.

It was not the regulation of common carriers on the highways that bothered the states. The common carrier business is subject to much more governmental control than private business. Of particular importance is the fact that common carrier rates may be regulated and injurious competition prevented.

If competition in private business could be stopped by the states and if charges for private service could be fixed by the government, there would have been no contract carrier regulation problem. But in this country freedom to choose one's own business and freedom from price or rate regulation is the general rule guaranteed by the Constitution. The regulation of rates and of the right to enter or abandon business is the exception which applies to common carriers or public utilities.

So the question soon arose as to how private carriers who were rapidly increasing and overrunning the highways could be curbed. As stated in the findings of the lower Federal court in the Stephenson Case:

> "The inevitable result of the continuance of the enormous increase of so-called private carriers for hire and the continual decrease in the number of common carriers holding certificates of public convenience and necessity will be the practical disappearance of common carriers from the roads."

The need for regulation of these contract carriers has been felt for a long time, but the job has been to frame a law which would stand against the constitutional guarantee of freedom in the choice of a calling and freedom from rate regulation. Attempts of legislatures to define contract carriers as common carriers and then to regulate them as such or to force them to assume the burdens of common carriers in consideration of a permit to use the highways failed. It has remained for Texas to find the way to deal with the contract carrier problem.

The Texas statute has been previously discussed and some of the questions suggested by it considered by the writer in this magazine.[1] It was assumed that the Texas statute was an attempt to regulate the business of private carriers rather than to regulate the highways.

There seemed to be some ground for this because the statute places the administration of the regulatory features of the act in the hands of the state railroad commission and provides, among other things, that if

> ". . . the commission (shall) be of the opinion 'that the proposed operation of any such contract carrier will impair the efficient public service of any authorized common carrier . . . then adequately serving the same territory,'"

then the commission may refuse a permit to use the highways. The provisions of the statute which authorized the commission to fix minimum rates, which forbid rebates and discrimination, and which require the contract carriers to keep books of account and make reports to the commission, also appeared to indicate that this was an attempt to regulate the business of private carriers just as if they were common carriers.

If this had been a correct view of the purpose of the Texas law, the statute would probably not have been sustained. The Supreme Court, however, construes and sustains the statute, not as a rightful regulation of the business of contract carriers, but as a constitutional exercise of the legislative power to regulate the use of the state highways.

THE Texas law declares the business of a motor carrier for hire along the highways of the state to be one "affected with a public interest." If it were in fact affected with a public interest, this would give the state the right to regulate the business both with respect to competition and rates. But the Supreme Court did not decide that question. Mr. Justice Sutherland, who delivered the opinion of the court, said on this point:

> "It is not necessary to determine whether the operation of trucks for the transportation of freight under private contracts, carried into effect by the use of the public highways, is a business impressed with a public interest."

Thus, the validity of the statute is

[1] PUBLIC UTILITIES FORTNIGHTLY, February 18, 1932, and March 3, 1932.

upheld on the ground that its purpose is to regulate highways and not business.

The point made by the court is that these private carriers divert freight from the railroads to the highways. The court said that the record shows conclusively that during recent years

> ". . . the unregulated use of the highways of the state by a vast and constantly growing number of private contract carriers has had the effect of greatly decreasing the freight which would be carried by the railroads within the state, and, in consequence, adding to the burden upon the highways. Certainly, the removal or amelioration of that burden, with its resulting injury to the highways, interference with their primary use, danger, and inconvenience, is a legitimate subject for the exercise of the state legislative power. And that this was one of the chief ends sought to be accomplished by the provisions in question, the record amply establishes."

It is this added burden on the highways—not competition *per se*—that the state has the right to prevent or regulate.

As a result of the decision of the Supreme Court there would appear to be no distinction from a practical standpoint between the power of the state to regulate common carriers and contract carriers with respect to competition. The difference is technical rather than practical. In the case of the contract carriers the purpose of the law must be to regulate the highways and not the business. In the case of common carriers the purpose may merely be to regulate the business without reference to use of the highways.

A RAILROAD company could object to the granting of a certificate of public convenience and necessity to a trucking company purposing to operate as a common carrier. The railroad company could say:

"This will hurt our business and be bad for the public. We should be protected from such competition."

The railroad would be permitted to show if it could that public convenience and necessity did not require the operation of another common carrier. This is because the common carrier business itself can be regulated and competition *per se* prevented. It is doubtful, however, whether a railroad, even under the decision of the Supreme Court in the Stephenson Case, could object to the granting of a permit to a private contract carrier on the same ground because the Supreme Court has not yet held that the business of the private contract carrier for hire is "affected with a public interest." However, the distinction appears to be one of pleading rather than practice. As a practical matter the facts or evidence which would show unwarranted competition in a common carrier case would probably be admissible under this decision to prove an unwarranted burden on the highway, in a private carrier case. It would only be necessary for the

¶ "THE *decision by the Supreme Court in the Stephenson Case gives the states all the authority they need to prevent private carriers from running wild on the highways and for the incidental protection of railroads and motor common carriers from competition harmful to the public.*"

Philadelphia Public Ledger

WATCHING THE WORLD GO BY

railroad to base its case on undue highway traffic rather than on undue competition.

The proper objection by common carriers to the establishment of a private carrier business is, therefore, not that the competition will injure the business of the common carrier but that it will injure the highways by the diversion of traffic from the railroads to the highways.

In the present state of decisions, the refusal of a permit could be sustained under the Texas statute on a commission finding of highway burden but might not be by a mere finding that the proposed competition would be harmful to existing carriers.

The question has been asked whether it would make any difference if there were no railroads and the dispute as to the right to use the highways were merely between common carrier truck owners and private carrier truck owners. The probability is that the same rule would apply, notwithstanding all freight were moved over the highways; but this question need not be considered, as, at the present time, it would be purely academic.

The right of the state to fix rates of contract carriers is also upheld by the court. It is to be observed, however, that this decision relates only to minimum rates, the purpose of the statute being not to regulate business but to regulate the highways. The court says that the rate provision

of the law by precluding the contract carriers from rendering service at rates under those charged by the railroad carriers has a definite tendency to relieve the highways by diverting traffic from them to the railroads; and that the contract carrier may not charge less than the rate fixed but is left free to charge as much more as he sees fit and can obtain. In other words, this does not indicate that the court believes the state has the full power to fix the rates of the contract carriers that it possesses in the case of common carriers. But it may fix rates so far as necessary to prevent the diversion of traffic from the railroads to the highways.

It is the purpose of the law that is important!

The court points out, in substance, that protection of the railroads from the result of competition by contract carriers is not the end of the Texas law but only the means to the legitimate purpose of conserving the highways. The court adds that the extent to which the provisions of the statute conduce to that end, the degree of their efficiency and closeness to the end sought to be attained are matters addressed to the judgment of the legislature and not to that of the court. It is enough to sustain the validity of the statute if it can be seen that in any degree or under any reasonable conceivable circumstances there is an actual relation between the means and the end.

The court concludes that the means employed to prevent diversion of traffic by requiring permits to use the highways and by the fixing of minimum rates have a reasonable relation to the end sought. The court says:

> "But in any event, if the legislature so concluded, as it evidently did, that conclusion must stand, since we are not able to say that in reaching it that body was manifestly wrong."

SEVERAL questions debated in the Stephenson Case were not decided. What the court might hold if a point were made as to the power of the state to control the accounting practices of private carriers or to limit their profits is questionable. In the absence of a ruling that the business is affected with a public interest, the state would probably have to show that the regulation of accounting and profits had some relation to the protection of the highways.

Be that as it may, the decision by the Supreme Court in the Stephenson Case gives the states all the authority they need to prevent private carriers from running wild on the highways and for the incidental protection of railroads and motor common carriers from competition harmful to the public.

The Texas law, as interpreted by the court, will probably serve as a model for the control of private carriers in other states which have been badly in need of guidance in solving the perplexing problem of private carrier regulation.

The Place of the Holding Company in the Structure of Business

Contrary to popular belief, this form of corporation is employed in other than the public utility field. AARON HARDY ULM *tells of some of them in a coming issue.*

What Others Think

Technocracy as a Threat to Private Utility Ownership

ANALYSIS of the economic depression is a problem made more complicated by superficial observers who attempt to oversimplify that which is necessarily complex and to give a false clarity that inevitably leads to a false conclusion. The depression is the result of a complication of causes. Foreign debts, high tariff, technological unemployment, disrespect for law—all these and other factors have contributed in making us fall upon evil days. Yet if one were to attempt to select from among these factors any one more troublesome than the rest, most economists would agree that the unbalanced distribution of purchasing power, whether it be itself considered a cause or as an effect, is the main problem. Some might even go so far as to say that all the other factors are but contributing irritants that have aggravated this main economic sore until it threatens to become cancerous.

Assuming the soundness of this diagnosis, our immediate problem is to redistribute purchasing power. We may do it by taking from the wealthy and giving to the penniless enough money to buy products manufactured by the wealthy and thus stir up the wheels of industry to the advantage of all concerned. Assuming that we will embark such a Robin Hood economic policy by governmental action rather than by voluntary private initiative, numerous methods have been suggested. Some seem plausible, and some are obviously inequitable. A partial list might include: increase of inheritance taxes, increase of taxes on higher incomes, currency inflation, debt moratoriums, and even public doles. By adopting one or a combination of these or allied Robin Hood measures, we may succeed in putting enough money back into popular circulation to start the wheels of industry turning without disturbing the present set-up. But anyhow, we are sure now that we will muddle through this main challenge of the depression in some manner. We are doing it already.

BUT, after the purchasing power problem has been solved (or postponed), we still have to solve the problems propounded by technocracy.

It is variously estimated that we now have twelve million unemployed in America. The solution of our credit problem through the redistribution of earning power and the recovery of business can, we are told, absorb at most from five to seven of these millions. What are we going to do with the residue? It is claimed that even in so-called "good times," men thrown out of work by technological development of machinery must remain idle for no better reason than there is simply no work for them to do. That is the question which technocracy poses. It is a comparatively distinct problem from purchasing and credit adjustment, and its solution, we are told, must come independently of the solution of the main problem of purchasing. In other words, let business recover and about half of our jobbers can go back to work, but the other half will have to remain idle until the technological unemployment situation is remedied.

WHAT is technocracy? Just at present it is a group of engineers engaged in an extensive analysis of our industrial growth. It started as an off-

shoot of physics at the time of the World War. Our best engineering minds tried their best to make machines produce more with less manpower, thereby releasing the latter for the trenches. The findings of this group of engineers have lately gained wide attention through the recent revelations of Howard Scott, director of the group, in the December issue of *Living Age*, and the more widely read series written in a somewhat more popular style by Wayne W. Parrish starting in the November and December issues of Al Smith's reincarnated *New Outlook*.

It would be futile to attempt here a summary of the numerous findings of fact by the group with respect to the increasing number of men thrown out of jobs by increasingly clever machinery. For instance, during the reign of Caesar Augustus, 7,200 Roman shoemakers took five and a half days to make 7,200 pairs of shoes; today the same number of employees of a shoe factory in the same time can produce 595,000 pairs of shoes. An Athenian miller during the lifetime of Aristotle took all day to grind out a barrel and a half of poor flour. A modern Minneapolis mill produces 30,000 barrels per man per day. It is a shorter working day and much better flour.

So on down the line of various occupations. Mr. Parrish tells us that in 1830 our rate of using energy had not passed the ox-cart period. Man was the best machine available, and he could only produce a one-tenth horsepower unit a day. Within the last hundred years, however, machinery has multiplied the original output rate of the human engine by 9,000,000! Of this total increase, 8,766,000 occurred since 1900, and the trend continues! Our machines are literally showering and swamping us with products, which our people cannot buy because they have no money—because they have no job—because the machine threw them out of a job. Here is a real vicious circle.

Well, what to do about it?

STUART Chase, nationally known economist, statistician, and writer, during a recent address to the City Club of Rochester, New York, was asked that very question. He answered:

> "A systematic program of public works must take care of the men made idle by the machine."

He was asked if that was the prevailing view of the technocrats. He was not sure but believed that most of them advocated public works as at least a partial remedy to take up the slack of technological unemployment. He was asked if he believed that any program of public works could possibly absorb the men made idle by the machine. He believed that, under skilful and enlightened political management, a public-work program could, at least, give a good account of itself.

Here is where the utilities should come to attention.

If most of our economists share Mr. Chase's views, "public works" will soon be shouted from the housetops as the specific cure for technological unemployment as soon as recovering business begins to relieve the pressure on our other problems. Public works will not stop with highways and bridges. It can't. We have almost all of those that we can use for the present. Public works will take the form of proposals for construction and operation of government power dams, government distribution lines, government railroads, and railroad building, government waterworks and canals, government pipe lines—in short, nearly every field of private utility enterprise will be threatened with invasion by the thundering herd of governmentally subsidized job hunters. Viewed in this light, technocracy, or, more correctly, the suggested remedy for technological unemployment, becomes a particular menace to the private fortunes of utility operators.

ALREADY our economic doctors are pounding at the doorstep of the utilities for jobs for the masses. Federal Judge George W. Anderson, writ-

ing in the December issue of the *Atlantic*, cries for governmental operation of our railroads as the only way to save them from the extravagance, waste, and incompetence of which he accuses the present private management. He says that it becomes a "public function" to provide public carrier service when charging what the traffic will bear fails to keep the railroads out of the red. If it can be made profitable, it belongs to "efficient private initiative." In other words, Uncle Sam ought to take over every white elephant business that cannot make the grade under its own power as long as it is an essential public service. The railroads, because of an alleged combination of stupidity and hard luck are unprofitable and should, therefore, be taken over by the government.

Judge Anderson accuses the private operators of the railroads of attempting to perpetuate themselves in office at the expense of working men made idle by mechanical improvements. He says:

> "Perhaps it ought not to be expected that the holders of overpaid places of power should agree on formulating and making effective a policy which would necessarily reduce the number of such places. Men have been known to burn job-limiting, labor-saving machinery. Our railroad managers have reduced the number of moderately paid jobs by about 800,000; so far, however, they seem to have kept, for themselves, most of these overpaid and pleasant positions of power. This accords with the present American policy of 'rugged individualism.'"

What can the utilities do to steer the economists from dumping the problem of technocracy right on their own doorstep?

First of all they can peg away at the "public works" idea as a cure-all for the machine-made jobless. And they had better start pegging away right now before the cure-all becomes universally accepted. It is very vulnerable.

For example, it is difficult to see how any public works program could possibly absorb the overflow of men made idle by the machine. If the ratio of technological unemployment continues to increase according to technocracy's figures, it is doubtful if even our own ingenious star spangled politicians could think up enough public works to put the horde on the public payrolls, assuming (for argument only) that the taxpayers either could or would foot the bills. Again, if we can invent machines to displace private labor, why can we not invent machines to displace public labor and lay highways by pressing buttons?

In other words, how are we going to keep Old Man Machine from invading the very field of public works?

After puncturing the public works idea, the utilities might try suggesting substitutes. Stuart Chase says that someone wrote to him suggesting a 10-year padlock on the Patent Office or a moratorium on all new inventions or something of the sort. The idea is a bit bizarre, but it is worth talking about perhaps.

MORE impressive is the idea suggested by the brilliant English essayist, Gilbert Chesterton. Mr. Chesterton was not referring to technological unemployment, but in his recent book of essays about American life he observes that there is already a reaction among certain people against the standardized products of the machine. These individuals (when they have the money to spend on it) are demanding more and more real artistic handicraft in their purchase. They are willing to let the masses have the products of the machine.

Here is an intriguing thought. Perhaps the solution of technocracy's problem lies in the encouragement of art, culture, and craftmanship. By developing this spirit of individuality, the demand for skilled artisans may absorb, in part at least, men made idle by the machine and at the same time contribute towards a renaissance of art. Mr. Parrish mourns the passing of our "free lands" and "new frontiers," which pulled America out of former depressions and absorbed our surplus manpower in bygone years. Perhaps the

limitless possibilities of artistic exploitation can be made our new frontier.

LET us not assume that the premises of Messrs. Parrish and Scott have gone unchallenged. There was an immediate reaction to their "findings." The following editorial from the Rochester *Times Union* summarizes some of this criticism:

> "While no one claims machinery does not present a serious problem, some specialists have been critically examining some of the data presented by technocracy.
>
> "John Van Deventer, editor of *Iron Age*, for example, ought to know something about pig iron. The rather vague reports would indicate that technocracy believes mechanization has speeded up productivity per man 650 times in a half century in making pig iron. But Mr. Van Deventer says it is only 23.2 times and he presents actual tonnage figures to show it.
>
> "This editor also examined the figures on steel production. In 1879 he finds 24 workers employed in this country in steel works for every 10,000 population. In 1929, there were 32 so employed. Yet technocracy is quoted as saying that man hours per unit of production . . . have dropped . . . to levels approaching zero.
>
> "Technocracy is quoted as saying that in agriculture one man can now accomplish in one hour work for which he required 3,000 hours in 1840. Mr. Van Deventer says this statement as a generalization is ridiculous. He cites cotton as a crop which is being raised and picked today by methods almost the same as in 1840.
>
> "Another authority likewise challenges the generalization on agriculture. He is Arnold P. Yerkes of the International Harvester Company.
>
> "The editor of *Iron Age* is outspoken in his criticism of technocracy, at least so far as the findings given out in popular articles are concerned. He says conclusions are given without supporting facts, that recognized engineering authorities were not given a chance to examine the material before it was given out, and the general nature of the articles is "so erroneous and contrary to fact as to stamp the entire pronouncement as an example of gross extravagance and hence worthless, or worse, as an engineering report."

IT must be conceded that technocracy advances its "findings" in formidable style. Armed with plots, graphs, curves, charts, and phrases such as "Energy Determinents," its language, as announced by Mr. Scott, literally floors the laymen. But some of us will remember back in 1928 when a certain school of economists with equally impressive equipment gave us the idea that prediction of financial development had been reduced to an exact science. They then proceeded to predict that a "new plateau" of living standards had been reached, that prices would continue to rise, and that the possibilities of production and sales development were limitless.

But that was in 1928. Predictors and phophets are always with us.

—F. X. W.

TECHNOCRACY. By Howard Scott. *Living Age*. December, 1932.

TECHNOCRACY. By Wayne W. Parrish. *New Outlook*. November-December, 1932.

A NEW DEAL. Address by Stuart Chase, City Club, Powers Hotel, Rochester, N. Y. December 3, 1932.

SALVAGING THE RAILROADS. By George W. Anderson. *The Atlantic*. December, 1932.

SIDELIGHTS. By Gilbert K. Chesterton. Dodd, Mead & Co., 1932. New York, N. Y. $2.50.

EDITORIAL. Rochester *Times-Union*. December 12, 1932.

Will the Kilowatt Succeed Gold as a Currency Basis?

AN interesting collateral issue has been brought out during the raging controversy over technocracy; it concerns a proposed revision of currency. Ever since history of man began, we find evidence of a seeking after a satisfactory standard measure of monetary value. Iron, copper, tobacco, silver—all have been used as money standards in the past without any clear

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TECHNOCRATIC SHOPPING MAY BE CONFUSING AT FIRST

cut success. Now gold, the basis for our own currency, is again under attack.

The technocrats declare that all the wealth of nations could and should be measured in terms of "energy units" rather than precious metal—"British Thermal Units, kilogramme calories, joules, ergs, footpounds, horsepower"—all are possible candidates for the enlightened currency basis which this cult of men of science is trying to figure out for us, according to an account in the weekly magazine *Time*. The article continues:

> "The charts, say the technocrats, show or will show that the present price system will not work. What will work is a world managed by technocrats wherein everyone does an equal and rather small amount of work (say twelve and one-half hours a week for twenty years) and enjoys an equal and very large income—in goods

provided by the state or obtained by an exchange of 'erg' tokens."

HERE is a currency program that must make the *manes* of the departed William Jennings Bryan green with envy. The learned Mr. George Soule has tried to figure out just what advantage this new deal in greenbacks would create. After examining his conscience, however, Mr. Soule is unable to see any dynamic significance in any such monetary hocus-pocus. Changing dollars, he believes, is a good deal like changing bottle labels. It doesn't mean anything unless the contents are changed—and the contents in this case would be our whole capitalistic structure—that is the really important problem. If and when that is accomplished, Mr. Soule believes that the use of dollars or erg tokens will make little difference. Writing in *The New Republic*, Mr. Soule states:

"I have not come across any detailed public statement of precisely what the technocrats expect to substitute for money. For money *as a unit of measure* they have apparently devised an "energy unit" which can cover at the same time the B.T.U.'s buried in a coal mine, the capacity of an electric generator, and the calories consumed by human exertion. This may turn out to be an important contribution to the technique of measurement, though it is difficult to understand why this unit would not vary just as dollars do when our utilization of these natural stores of energy increases or decreases in efficiency. For money *as a medium of exchange*, if their developed program accords with Howard Scott's earlier ideas, they would substitute tickets or certificates, denoting a certain number of energy units, issued to individuals, nontransferable, and good only for a month or a year. A purchase would be made, not by the surrender of the card, but by punching a hole in it. Thus each person could buy in a given period exactly as much as some central authority wanted him to buy. The purchasing power distributed could be equated to the goods made, and vice versa. Nobody could hoard money or lend it at interest. Prices could be fixed according to the energy units consumed in making and distributing the product.

"No doubt some such plan could be worked. But only by the abolition of private profit, interest, and private enterprise in production of goods and services. There would have to be central control of the distribution of income. If we had all these things, we could use old-fashioned money to accomplish exactly the same result. After all, what we need to do is to regulate production, investment, credit, prices, and incomes. That is the central problem, not the invention of a new kind of money."

BUT while all this controversy over erg tokens was raging about the ears of the technocrats, Dr. John Pease Norton, economist of Suffield, Connecticut, addressing the American Association for the Advancement of Science, made a suggestion for monetary reform which should be of unusual interest to the electric utilities.

In a word, Dr. Norton proposes a new kind of money, the "electric dollar," with its value based on electric energy instead of gold. These "Edison dollars" would be issued in the form of currency like paper money now in use. The chief advantage claimed for the electric dollar is its constancy of value. It would not be subject to the fluctuating whims of good or bad times, because the electric dollar would always purchase approximately the same amount of goods. The dollar would be valued in terms of kilowatt hours. Each issue would be legal tender for five years, because the average cost of producing electricity does not vary very much during that period.

The adoption of the electric dollar would, of course, place the electric utilities in an extremely favorable financial position—also in an extremely delicate political position. The movement to nationalize the industry would probably be stronger than ever. However, the idea is a bit confusing as yet.

—M. M.

TECHNOCRACY. *Time*. December 26, 1932.

TECHNOCRACY. By George Soule. *The New Republic*. December 28, 1932.

ADDRESS by Dr. John Pease Norton before the American Association for the Advancement of Science. Atlantic City, N. J. December 26, 1932.

The Conflicting Obligations of the Holding Company to the Investor and to the Ratepayer

THIS is both a happy and an unhappy time to write about holding companies. Public interest is keen, but a lot of us don't like to be reminded of mistakes. Professor Merwin H. Waterman's book "Financial Policies of Public Utility Holding Companies" is not pitched for the average reader. It has plenty of statistics. But the "glance-and-run" reader will find the author's conclusions conveniently summarized in the opening pages, virtually without a single "statistic."

Professor Waterman has made a comparative study of the financial practices and policies of five holding companies against the background of the claimed functions and advantages of this form of corporate enterprise. The years covered by the study are 1925 to 1929, inclusive, with occasional references to more recent events. The companies chosen were: American Power & Light Co., Associated Gas and Electric Co., The North American Co., Standard Gas & Electric Co., and The United Light and Power Co. These companies exhibit a fairly wide variety of financial policies and practices. Professor Waterman confines himself to comparisons of operating policies, parent company *versus* subsidiary company financing, trading on the equity, methods of financing acquisitions, types of securities offered and methods of distribution, and methods of disposing of income. Being limited to published financial statements, the author obviously could not go into these matters with the thoroughness he might have wanted. Consequently his conclusions are those of the student of corporate finance from the vantage point of an outsider.

HERE are samples of Professor Waterman's conclusions:

> "The economies of large-scale management which have been alleged for the holding company form of organization are decidedly limited."
>
> ". . . size for the sake of diversification alone is not justified."
>
> "Parent company financing and the issuance of parent company securities are best regarded as supplements to and not substitutes for subsidiary financing and subsidiary security issues."

Holding company borrowing is satisfactory, but:

> "The use of nonvoting preferred or other limited-return stocks offers many of the advantages of debt financing without involving the dangers of the latter arising from the legal rights of creditors."
>
> ". . . The exchange of common stock for the equity securities of new companies is preferable to the purchase of these equities for cash or to their acquisition by exchange of bonds or preferred stocks."

Simplicity of parent company financial structures is desirable.

> "The use of convertible bonds is quite inconsistent with the capital needs of the utility industry and is in violation of the principle of simplicity."

Reinvestment of earnings is preferable even to privileged subscription offers to stockholders.

> ". . . Reinvestment will be most effectively used if earnings are left in the subsidiary organizations. To pay earnings out to the parent company necessitates their conversion into liquid form, and, once in the coffers of the parent company, the liquid assets represent a temptation to acquire more subsidiaries or to increase cash dividends."

IT will thus be seen that Professor Waterman is safely conservative and general. His language is dispassionate and scientific, unless some devotee of variety store methods of security distribution objects to his description of one company's financial structure as "nightmarish." It is not to be inferred from the above quotations that all the holding companies considered are following evil ways. On the contrary, almost all of the financial policies believed sound by Professor Waterman are followed in some degree

by one or the other of the companies he surveys. It is a wholesome truth for the general public and utility executives to remember that the bad practices of some holding companies inevitably bring good holding companies into disrepute.

I have three general comments on this study.

(I) Professor Waterman apparently considers only or primarily the relations of holding companies to investors. I submit that the effects of holding company financial operations upon the ultimate users of utility services and the rates they pay is at least of equal, if not of superior, importance. There has been too much of the attitude that utility services are fields for private exploitation and too little of the attitude that utilities are public businesses entrusted to private capital on the theory that more efficient service will be given at lower costs.

What benefits do consumers get when a holding company forms a new operating company to take over the assets of the old company at greatly enhanced plant values, wiping out surplus and depreciation reserves, and then pledges the increased stock of the new company on borrowings of the holding company?

How do consumers benefit when a holding company takes in dividends or advances all the free cash of an operating company so that needed service improvements cannot be made? What should consumers say if rates are fixed to yield a certain amount for claimed depreciation and return and then the company pares down depreciation provisions in order to pay generous dividends to a holding company which is thus helped to pay its own security holders and promote new acquisitions?

What shall be said of a company which collects contributions from customers as a condition of extending service and then sells the property at full value to another company which in turn proposes to sell to another company if all liability to refund customer contributions is wiped out?

These are not isolated instances, nor are they universal. As in all industries, there are good and bad operators, and the good should not be condemned for the malpractices of the bad. But I submit that the common feature of all such transactions is the aim of making money without regard to the interests of subsidiaries. Unfortunately for the good of the utility industries, there have been too many financiers and promoters and too few public servants in the seats of the mighty.

(2) This study throws very little light on the relative cheapness of independent financing compared with holding company financing. When in a time of stress holding companies have to lean on their operating subsidiaries' credit in order to keep going, the alleged superiority of the holding company in raising capital cheaply is open to serious question. Some people are beginning to realize that utility financing and utility holding companies in the past have been too much dominated by investment bankers with narrow visions. The curse of the holding company has been that all-important "little" item—the salesman's commission. There are operating companies which before holding company control raised capital at lower costs than were obtained after the holding company began guiding their financial destinies. It is high time we began looking more carefully into the relative cheapness of independent and holding company financing.

(3) Professor Waterman pays no attention to borrowings on open account or for periods of less than five years *within* the holding company system. Some of the practices in this field may seem proper if we take the view that utilities are purely private businesses, but they appear ill-suited to public businesses.

Borrowing surplus funds from one operating subsidiary at a modest interest rate and lending to another at higher rates, yielding a generous profit to the holding company, is certainly not

unknown. Holding companies have made large advances, repayable "on demand," to operating companies; sometimes these advances have remained for years, with interest accrued monthly at rates substantially in excess of the operating company's actual costs of capital from the open market. Then when the holding company feels pinched comes the demand for repayment which may involve refunding with short-term public borrowings at high cost.

I do not say intercompany borrowing and the system of advances do not have legitimate and desirable uses. But when these practices are indulged in immoderately and are motivated almost wholly by a desire to make profits for the holding company, instead of cheapening the cost of capital to utilities, they do not conform to desirable standards of business conduct in utility industries. Again the conflict between too much profits and good service at lowest possible cost!

Which of these roads will be chosen tomorrow after the depression experiences have made their mark? The answer lies in the future and is very largely in the hands of those who can and will show leadership within the industry.

—E. W. MOREHOUSE

FINANCIAL POLICIES OF PUBLIC UTILITY HOLDING COMPANIES. Merwin H. Waterman. Michigan Business Studies, Vol. V, No. 1, University of Michigan, Ann Arbor. 1932. 186 pages. $1.00.

Does the Motor Carrier Pay Enough Taxes for the Highway?

IN the welter of controversy over the necessity of regulating motor carriers so as to prevent possibly fatal consequences to our railroads, there has developed a new viewpoint of the highway—the public right of way provided for the motor carrier at the taxpayers' expense. Railroads, of course, must build their own right of way and pay taxes upon the value of it in the bargain —not to mention such little items as maintenance and depreciation. How are we going to compel those who make their living out of our highways to pay an equitable share for its cost and upkeep, and at the same time regulate them in the interest of the public, the shippers, and (to the extent warranted by public interest) the railroads?

Mr. Charles B. Steward, writing in *Review of Reviews,* suggests that our fundamental difficulty in the past in making these delicate tax adjustments has been that we have overlooked a simple fact—that the highway is a public utility, publicly owned it is true, but a utility just the same. And like every other utility, those who use its service ought to pay for its use with due regard for quantity, consumption, demand, and all other factors that enter into utility rate making. It is a novel but at the same time plausible viewpoint the way Mr. Steward puts it. He writes:

> "The highway being a public utility it should be obliged to make the same return to the owners (the taxpayers) as if privately owned, such as a railroad, a street car line, a gas plant, an electric light plant, or any other public utility. It is equitable that the users shall pay all the costs of township, county, state, and Federal roads. Those costs are composed of the following:
>
> "1. Construction.
> "2. Maintenance.
> "3. Policing.
> "4. Interest on outstanding highway bonds.
> "5. Amortization of bonds.
> "6. Depreciation and obsolescence.
> "7. Payment into the general fund of an amount for taxes equal to what would be paid if highways were privately owned.
> "8. Payment into the general fund of a fair return upon amount invested by taxpayers through taxes paid for constructing highways.
>
> "These costs may be allocated to all users, of every kind, and assessed upon the

gallons of gasoline used and upon the pounds in weight of each vehicle."

ONE may wonder just what is new about this. Do we not already have the gasoline tax in every state in the Union? Do not most of our states figure tax or plate fees on the weight (or at least the horsepower) of the vehicles used?

True enough—but just what percentage of the cost of the highways are the users paying to the nonusers? Remember, our highways have been largely built at the expense of the landowner out of *ad valorem* taxation. Of course the property taxpayer is not always a nonuser. He too may have, and probably has, a car. But if he pays taxes on large amounts of property, he is taxed as a nonuser in addition to (and all out of proportion to) his status as a user. His neighbor may not own anything else but a flivver, and thereby escape taxation as a nonuser entirely.

Mr. Steward figures that during the eight years from 1923 to 1930—the users paid in taxes $3,918,268,285 for their share of highway cost. The property owners or nonusers paid $7,820,613,986. In other words, users contribute 36½ per cent, and nonusers contribute 63½ per cent to our highway bill.

To sum up Mr. Steward's argument, he would have us value our highways, compute depreciation and other operating costs, and finally determine what revenue per year would be required to pay to the public treasury a fair return on the *nonusers'* investment, just as a state commission values a gas utility's property and fixes rates calculated to yield a fair return on that value. Mr. Steward would then have us tax the vehicles in proportion to their use in such a way as to raise the annual amount required. His argument concludes:

"By the establishment of the foregoing principles the *ad valorem* taxes against property would be reduced: (a) by being relieved of construction and maintenance costs of the highways, and (b) by receiving in the general fund an amount for the use of the highways equivalent to a return upon the investment and the taxes paid by this utility."

It is a rather ambitious program, but it appears offhand to be a very equitable one.

MR. Alfred Reeves, vice president of the National Automobile Chamber of Commerce told the annual institute of public affairs at Virginia University that the automobile is already bearing its share or almost its share of the highway bill. He stated:

"The annual taxes amount to 25 per cent of the average value of a car during its seven years of life. We find some sixteen different forms of taxes imposed on the manufacture, sale, or use of motor vehicles, with trucks in some states paying as much as $2,000 annually.

"A Federal government survey in Pennsylvania demonstrated upon a purely scientific basis that motor vehicles are paying in that state just about what they should pay when the extra cost of highways for each buyer of vehicles is taken into consideration.

"In this study the average passenger car is shown as paying $24.50 per year for gasoline taxes and registration fees, whereas it should be $26.

"Similarly a 2-ton truck is now paying $113 when it should pay $100. A 5-ton truck is now paying $255 and should pay $276."

Aside from Mr. Reeves' admission that the automobiles and trucks are not quite paying their quota, one suspects that there is a catch to his qualification "when the extra cost of highways for each buyer of vehicles is taken into consideration." Does he mean that each vehicle should only pay its share of the cost of *additional* highway necessary to accommodate it?

How about the established highways that have already been built at the taxpayers' expense, or at least, how about maintaining them?

—F. X. W.

THE HIGHWAY: A PUBLIC UTILITY? By Charles B. Steward. *Review of Reviews.* October, 1932.

IMPORTANCE OF HIGHWAY TRANSPORTATION TO ECONOMIC RECOVERY. Address by Alfred Reeves before Institute of Public Affairs. University of Virginia. July 8, 1932.

The March of Events

Utility Head Urges Financial Reforms

H. M. Addinsell, president of the Chase Harris Forbes Corporation, addressing the Investment Bankers' Forum of the New York University Graduate School of Business Administration on December 15, 1932, advocated certain changes in public utility company financial practice. The *Wall Street Journal* summarizes the address as follows: "After reviewing the history of public utility financing, Mr. Addinsell proposed changes in security nomenclature better to identify the securities sold to the public by utility companies; recommended refinements in debenture financing in the interest of greater investment safety, and advocated, among other changes, cessation of the sale of holding company stocks to customers of utility operating companies. Further simplification of capital structures, universal use of the audit method of utility accounting, rearrangement of scattered groups of operating subsidiaries into groups of sufficient size to permit of greater economies in consolidated operation, and the gradual exchange of properties among the large systems so that geographic coördination of the units in each system may be more logical, were urged."

Mexico to Control Power Companies

A bill sponsored by President Rodriguez for federalizing power companies will be enacted soon by Congress, according to a news dispatch in the New York *Times* from Mexico City on December 11th. All power companies, according to the measure, which have been reported out by the committee on constitutional amendments, hereafter will operate under Federal concessions and Federal regulations instead of under control by the states. A study by the committee showed that 95 per cent of the hydroelectric power in Mexico is produced by three foreign companies, as follows: The British-owned Mexican Light and Power Company, 60 per cent; the Electric Bond and Share Company, of New York, 30 per cent, and the Compania Electrica de Chapala, 5 per cent. The remaining 5 per cent is distributed among 375 companies.

California

Utility Assessment for Regulatory Cost Urged

A San Francisco dispatch to the *United States Daily* of December 16th, stated that the annual report of the California Railroad Commission directed attention to its plan for financing its activities by an assessment upon the utilities instead of an appropriation from the general fund. The commission also recommended an amendment to the present law that will give it control over loans to or from stockholders of utility corporations, or over such transactions between utilities and affiliated corporations.

Subscribers Sign Up for Phone Rate Cut

A campaign for lower telephone rates swung into action on December 13th, with the circulating of petitions by members of the Telephone Subscribers' Protest Committee, according to a dispatch from the Los Angeles *Record* of that date. The petitions, asking for a substantial rate reduction, were handed to Los Angeles city and county residents. Following notice last week by the committee that over 5,000 names had been added to the list of protesters, a branch office of the committee was opened in Glendale.

Connecticut

Power Consumers Sign Protest against Flat Rate

AN organized drive started by the Citizens Property Owners' Association and the Consumers' League against the flat rate charge of the Connecticut Light & Power Company reached its climax at their common council meeting at New Britain on December 21st, when the two organizations filed a petition signed by 1,800 property owners asking that the corporation counsel take legal steps to obtain a hearing before the state public utilities commission on the question. The council voted to refer the petition to the corporation counsel and the special committee on public utilities.

District of Columbia

Senator Blaine Ends Filibuster on Street Car Merger

THE Senate deadlock on the District street railway merger was broken shortly before noon on December 22nd, when Senator John J. Blaine (R.), of Wisconsin, who has been carrying on a one-man filibuster against the resolution of Senator Warren R. Austin (R.), of Vermont, providing for consideration of the merger bill, agreed to a compromise. The Senate was expected to proceed to the deliberation of the plan without further delay. Traction officials gave way to some of the demands of Senator Blaine, and agreed to accept his terms of a 3-cent fare for school children, public utilities commission regulation of all electric power, and certain other concessions, according to a news dispatch in the Washington *Times*. The concessions made by the street car companies were not entirely satisfactory, according to Senator Blaine, who has declared that the original bill did not protect public interest. He announced, however, that he was willing to step aside and allow consideration of the bill.

The agreement marks the beginning of the end of a long battle waged in the Senate over the 25-year old controversy involving a proposed merger of the two competitive street railway companies operating in the District of Columbia. Besides Senator Blaine, Senator Arthur Capper (R.), of Kansas, chairman of the Senate District Committee, was one of the last to relinquish his opposition to the proposed merger.

Public Utility Regulation of House Rents Urged

A RECOMMENDATION that the District of Columbia Public Utilities Commission be given authority to regulate rents in the city of Washington was incorporated in a report of Oscar H. Brinkman, special counsel and investigator, recently filed with the Senate District Committee. Under the recommendation, the utilities commission would be given power to enforce a rental censorship under an act of Congress. Brinkman's report contains nine recommendations, the first of which was considered December 23rd. The recommendation urges prosecution of real estate men who, Mr. Brinkman believes, have been conspiring to keep rents in the capital city at a high level. Assistant Corporation Counsel William A. Roberts said that he did not see offhand how Mr. Brinkman's plan differed from the old Rent Commission Act, which was held invalid and unconstitutional by the Federal court, but that he was willing to go into the matter thoroughly and would like to do so before making further comment.

Florida

Tampa Wins Rate Agreement

MAYOR Chancey of Tampa, on December 20th, announced an agreement with the Tampa Electric Company drawn on a 5-year basis, to give the city the right to make a 10 per cent cut in the number of street lights at any time during the life of the contract. The mayor said that the contract would enable the city to save $47,000 a year through a revised schedule of rates. Negotiations began last fall.

Illinois

Monopoly Privileges for Taxicab Companies Urged

THE granting of monopoly privileges to taxicab companies, on the ground that their regulation by the city or state entitles them to consideration as public utilities, was advocated before the Chicago council subcommittee on taxicabs December 20th by A. J. Frieberg, general counsel of the Cincinnati Taxicab Company. The committee is considering revision of present taxicab regulations. Mr. Frieberg made the following statement:

"Taxicabs are a public utility quite the same as the surface lines. If the city regulates any utility, and there is scarcely a city where taxicabs are not regulated, it must reasonably protect that utility from unfair competition. The public is entitled to as low a rate as can reasonably be given to insure a fair profit, plus a safe service and a fair wage to the driver. Virtually all cut-rate companies in the United States, however, have failed within a year's time."

Indiana

Muncie Council Turns Down Rate Cut Offer

THE Muncie city council, at a meeting on December 19th, disapproved of the proposal of the Central Indiana Gas Company to lower rates for Muncie consumers. Without a dissenting vote the councilmen turned down the company's proposal which carries reductions amounting to 4 per cent in the lower brackets, up to 30 per cent for the heavier brackets. Rodney Hayler, who is the industrial engineer for the gas company, was the only councilman absent from the meeting. The gas company was not represented at the hearing, but it is probable that it will now submit its case to the state public service commission before which the city has a petition asking for lower rates. Final decision in any event rests with that commission, according to a news item in the Muncie *Press*, December 20, 1932.

Brazil Accepts Lower Rate Offer

REDUCED rate schedules which will mean an annual saving of nearly $8,000 to Brazil customers of the Public Service Company of Indiana, the second rate reduction for Brazil during the year 1932, were filed with the public service commission of Indiana on December 15th, for its approval. A news item describing the proposed reduction in electric rates, carrier in the Brazil *Times & News* for December 15th, stated that lower rates for current in Brazil are now assured.

Iowa

Lower Water Rate Ordinance

WITH the hope of ending the controversy over water rates, the Iowa City council at a special meeting on December 5th passed a resolution ordering the Iowa Water Service Company to put into force January 1, 1933, new rates, making a reduction in the annual gross revenue of the water company of $12,000. The new resolution was introduced following Mayor J. J. Carroll's veto of the one passed by the council November 26th, in which the $12,000 reduction was asked in addition to free water for the city for several purposes. The council accepted the mayor's veto and placed it on file. The new resolution, which was passed unanimously by the council, was immediately signed by Mayor Carroll.

A City's Right to Regulate Utility Rates Upheld

THE city council of any community has the absolute right to determine public utility rates, as shown by a decision of the Iowa state supreme court, George A. Rice, attorney for the city of Mapleton, told members of the Greater Sioux City committee at their regular weekly meeting in Sioux City on December 9th. The attorney predicted that if the city council of Sioux

City ordered utility rates lowered, the public utility company would carry the case to court and attempt to show that under a lower rate schedule a fair return of profit on the company's investment could not be realized.

Louisiana

Phone Rate Hearings Held at Shreveport

SHREVEPORT'S bid for lower telephone rates was to be considered at a 2-day hearing of the Louisiana Public Service Commission, to be held in that city in the second week of January, Harvey G. Fields of Farmerville, chairman, told the Shreveport *Times* December 20, 1932. The docket at the Shreveport hearing will consist also of between 12 and 15 cases involving applications for new motor freight and passenger permits. One-man sessions having been abolished, the hearings were to be conducted jointly by Mr. Fields and Commissioners Francis Williams of New Orleans, former chairman, and Wade O. Martin of St. Martinsville, successor to Dudley J. LeBlanc.

Maryland

Fixing of Taxicab Rates for Baltimore Considered

HEARINGS on petitions for the limitation of the number of taxicabs operating in Baltimore and the establishment of rates of fares were to be opened by the Maryland Public Service Commission at 10 A. M. on January 10, 1933. Authority for the action was given in a measure passed by the state legislature in February, 1932, establishing rules and regulations to govern the control and operation of taxicabs in Baltimore city and surrounding territory.

Two petitions before the commission ask that the commission establish a minimum rate for Baltimore cabs at 25 cents for the first 2 miles or fraction thereof, which represents a compromise between the Yellow Cab Company and the Taxi Operators' Association of Maryland, which filed the petitions. In addition, the Yellow Cab Company asks that the commission limit the number of taxicabs operating in the city of Baltimore to 800, while the association requests 1,000 as the limit. It was estimated by the Baltimore *Sun* that there are now more than 1,300 cabs, owned by 672 individuals or companies, operating in the metropolitan area of the city of Baltimore.

Power Company Appeals from Commission Valuation

ONE day before the expiration of the appeal time limit, the Potomac Edison Company filed with the public service commission a protest against the commission's rate-making valuation set last November 29th at $15,682,043. Alleging that numerous errors had entered into the commission's computations when the valuation was lowered approximately $10,000,000 from that set by the company, the utility asked "that the commission disapprove and withdraw the said tentative valuation and refuse to make the same final in the form in which it now exists." The public service commission is expected to set a date in the near future for a hearing at which the Potomac Company will present its arguments for a higher valuation.

Massachusetts

Newburyport Gas Rates Deferred to the New Year

UPON a plan acceptable to the Haverhill Electric Company the special committee appointed by the Newburyport city council recommended to that council that a slight increase be charged to users of gas of less than 500 cubic feet per month, and in return that the company should grant a decrease to larger consumers. Considerable opposition

developed against accepting the committee's recommendation, according to a news dispatch in the Newburyport *News & Herald* of December 17th, and it was voted to submit the matter to the city council of 1933. The committee did not press a claim for lower electrical rates, as the company recently granted a slight decrease.

Voluntary Gas Rate Reduction in Greenfield

GREENFIELD greatly benefited after January 1, 1933, as the result of the reduced rates announced by the Greenfield Gas Light Company, which will mean a saving of $7,000 a year in the cost of gas for cooking, house heating, and domestic water heating. It was the first reduction made benefiting the general service since June 1, 1930. Reductions have been made since that date affecting certain classes of service, but none applying to the general service, which, in the change announced December 19, 1932, will benefit to the extent of $4,600. The new rates were voluntarily put into effect by the company as the result of studies by its manager Lorenzo B. Fortin, who is attempting to put all classes of service on an equal basis according to the amount of gas used.

Michigan

Grand Rapids to Insist on Horizontal Rate Cut

A PROPOSAL that the Grand Rapids Gas Light Company put into effect a straight 10 per cent reduction in rates, to benefit all consumers, small as well as large, will be made by the city commission as the result of a conference held on December 21, 1932. Sitting as the committee of the whole on that day, the commissioners adopted the motion for a straight horizontal 10 per cent reduction, offered by Commissioner William Laban, as a counter-proposal to the offer made by the company the preceding week. The company had proposed to reduce rates on consumers of 5,000 cubic feet per month or more by a percentage which would aggregate about $40,000 over the course of a year. In addition, the company agreed to donate 1,500 tons of gas coke to the city welfare department. The value of this coke was estimated at $10,000. Based on an approximate $1,600,000 gross sales for 1932, the counter-proposal by the commission will mean about $160,000 reduction, according to a news item in the Grand Rapids *Herald*.

Phone Rate Increase Blocked by Federal Ruling

ON Christmas eve, Michigan won another battle in its long legal fight over the attempt of the Michigan Bell Telephone Company to increase state telephone rates approximately $6,000,000 a year, when Federal Judge Arthur J. Tuttle upheld a report by Special Master William S. Sayres, ruling that the company had no right to fight a proposed increase in Federal court until it had made a full showing of its position before the Michigan Public Utilities Commission. The decision leaves in effect the rates established in 1924 when the utilities commission reduced them by $3,000,000 a year. The basis of the ruling was the refusal of the company to produce records showing charges made to the Michigan Company by the American Telephone and Telegraph Company and the Western Electric Company. The commission had demanded the company to produce the records to justify the charges. Mr. Sayres took the position that the company had not exhausted its remedies before the commission until these records had been reviewed, and consequently had no right in Federal court at this time.

East Grand Rapids Considers Municipal Plant

LOOKING somewhat to the future, East Grand Rapids has under consideration a municipally owned electric light and power plant, according to a news dispatch in the Grand Rapids *Press*. A special committee of the city commission early in December made such a suggestion after some study of utility rates generally. The committee suggested that City Manager L. Henry Gork prepare a general distribution map upon which estimates of the cost of a lighting system could be based, the plans for an electric light and power plant to be gone into at a later date.

Missouri

Springfield Settles with Two Utilities

TERMINATING a controversy over street lighting rates which has gone on for several months, the city council on December 12, 1932, finally came to terms with the Springfield Gas and Electric Company, when it voted to accept an optional demand rate proposed by the company for its commercial light users. The council's agreement with the utility provided that the company was to pay $8,000 and interest to the city, in cash, on January 1, 1933, carrying out the company's offer to surrender $8,000 worth of protested warrants which it held against the municipal government. The warrants themselves will be retired out of the city's back tax funds.

At the same meeting the council unanimously accepted the offer of the Southwestern Bell Telephone Company to pay a license tax of $8,000 a year into the city treasury during the next three years. In the past the telephone company has paid $1,000 a year and furnished the city 20 telephones for the privilege of doing business in Springfield. Mayor Harry D. Durst explained that the agreement with the telephone company merely raises the license tax, which the telephone company pays to the city, but does not prevent a change in telephone rates.

St. Louis Committee Considers Railway Acquisition

THE subcommittees representing the city and the security holders of the St. Louis Public Service Company started on December 15th to study the problem of possible city acquisition of the company's properties from two angles. One would involve consideration of the construction of a down-town subway to be financed by a loan from the Reconstruction Finance Corporation. The other would eliminate the subway from the scheme. The subcommittee thus will make two reports to the full city and company committees on city acquisition, one with the subway proposition and one without it.

Nebraska

Free Power as Christmas Gift

POTTER and Dix, both served by the Potter municipal light plant, received free electric power during the month of December as a Christmas gift from the village board of trustees. The concession applied to every consumer, regardless of whether his account was paid to date. The municipal plant at Lodge Pole made a similar offer the preceding week, but required that all accounts be paid in full.

New Mexico

Law Increasing Commission Jurisdiction Being Drafted

ACCORDING to a dispatch from the Albuquerque *Evening Journal,* Robert Hoath LaFollette, attorney of that city who some time ago asked the state legislature to investigate light rates in Albuquerque, stated that the decision of the state supreme court holding that the commission lacked power over gas and electric companies cleared the way for seeking the necessary legislation. Mr. LaFollette explained that the decision was a necessary step toward getting legislation to give the commission rate-fixing power. He stated that he was glad the decision was rendered in time for the first legislature "since statehood not dominated by the lobbyists." Mr. LaFollette expressed his confidence that the legislature would pass necessary measures which are now being prepared to extend the commission's jurisdiction over gas and electric utilities.

New York

Segregation of Merchandising Accounting by Utilities

THE New York *Times* of December 17th stated that the public service commission of that state had directed all gas and electric companies operating in New York to keep separate records which would show the complete cost of merchandising activities, as well as revenues derived from them, and the expenses, profit or loss entailed. The commission's accounting system will be amended to make it possible, after July 1, 1933, to keep its own records in accord with this ruling. Its report asserted that no determination was being made as to whether merchandising should be treated as an independent, self-contained enterprise, or its profits and losses merged with income from public utility business. The purpose of the new rule, it is said, is to make the facts available so that other questions can, if necessary, be treated accurately.

Sharing of Cost Asked for Utility Regulation

THE New York State Conference of Mayors, according to an Albany dispatch to the *United States Daily* on December 24th, recommended that legislation be enacted requiring public utility corporations to pay not less than 50 per cent nor more than 75 per cent of the expenses of investigations, rate proceedings, and valuations made by the public service commission. The Mayors' Conference also recommended that the commission should determine how expenditures made by public utility corporations, in proceedings before the commission and the courts relative to rates, security issues, valuations, and revaluations, shall be paid. Further, that the commission should have power to investigate and subpoena the officers, employees, books, documents, and records of any person, firm, or corporation which furnishes to any utility in the state any management, auditing, purchasing, engineering, or construction service. Similar interrogatory powers for municipalities were also urged. The conference finally urged that municipalities should have the right to become a party to all proceedings by or before the public service commission, affecting utility service within such municipalities, and that the commission should not increase any utility rate except upon notice to the municipalities affected.

No Cut in Utility Commission Appropriation

AN Albany dispatch to the New York *Herald Tribune* on December 22nd stated that Governor Franklin D. Roosevelt, president-elect, after budgetary conferences on December 21st with the heads of several New York state departments, said a reduction of the expenses of the New York Public Service Commission was unlikely because the number of communities asking that department to act had greatly increased since his own campaign speech at Portland, Oregon, last September, in which he held that utility commissions should represent the people in rate cases.

North Carolina

Evidence Shows More Need for Increase Than Decrease in Rates

ACCORDING to a news item in the Raleigh *News & Observer* of December 22nd, North Carolina's gas companies unfolded a dismal story to the corporation commission as it sat to hear proposals for rate reductions. It was stated that the commissioners listened to one economic dirge after another, until it finally appeared that with the returns all in, only three gas concerns in North Carolina are coming anywhere near breaking even. Small companies came in with statements showing 1932 operations to be in the red, and more than intimated that abandonment loomed if operations could not be put upon a more profitable basis in the near future. The press item stated:

"There is no question but that the gas companies made an eloquent case for increasing rather than reducing their rates. But none of them asked for that. All asked that they be left as they are for the time being with the hope that something will happen. Just what might happen, none of the gas people seemed to have any definite idea, except as one said, if business doesn't stop going to the electric companies and consumption doesn't increase, there are going to be a lot of gas plants left on somebody's doorsteps."

Ohio

Eighteen Million Dollar Rebate Asked from Phone Company

SUIT was filed against the Ohio Bell Telephone Company on December 19th for $18,000,000 which the company has been collecting under bond through increased rate schedules set up August 1, 1924. The suit, filed in common pleas court by Guy D. Brookins, president of the Rivercrest Development Company, also petitions for an accounting of collections since that date, and asks the appointment of a receiver for the $18,000,000 collected, and an injunction to block further collections above the regular phone rates. As the case moved into the courts, dispatches from Columbus stated that hearings in the Ohio Bell Telephone Company rate case were resumed December 20th in a final effort to wind up the long-standing dispute over valuation of the company's properties by the utilities commission.

The Brookins suit sets up the claim that the provision of the law giving utilities the right to collect higher rates, pending investigation of the rates by the public utilities commission, is unconstitutional. Mr. Brookins brought his action in behalf of approximately 700,000 telephone subscribers affected by the higher rates. The rates affect every large city in the state except Cincinnati.

Cleveland Abandons Fight for Immediate Gas Rate Cut

ALL efforts of the city of Cleveland to obtain a temporary emergency gas rate reduction have been abandoned, City Law Director W. George Kerr announced on December 24th, following a meeting with the city's special counsel on the gas case. During the preceding week, the Ohio Supreme Court ruled against the city in its fight for the emergency rate. Following that decision, Mr. Kerr said a rehearing might be sought. But the attorneys have now changed their minds believing that all efforts should be spent in preparing for the fight for a permanent reduction of 10 cents per thousand cubic feet in the gas rate.

Oregon

Inquiry of Intercorporate Relations of Utilities

IN an avowed attempt "to break the domination of Eastern financial interests over utilities in Oregon," Charles M. Thomas, Oregon public utilities commissioner, opened hearings December 13th into the intercorporate relations of the Pacific Power and Light Company, Inland Power and Light Company, Northwestern Electric Company, Portland Gas and Coke Company, American Power and Light Company, and the Electric Bond and Share Company. Besides investigating salaries paid to executives of the four companies, Mr. Thomas, in a hearing on December 15th, threatened to get a court order to compel John Laing, attorney for the Northwestern Electric Company, to furnish a translation of a code telegram, which was claimed to be the private property of the Electric Bond and Share Company.

On Christmas eve, Commissioner Thomas announced that he will seek legislation at the 1933 session to require public utilities to pay the costs of regulation.

South Carolina

Utilities Restate Conditions to Rate Reduction

THE Duke Power Company and the Southern Public Utilities Company have notified the South Carolina Railroad Commission that they cannot put into effect the proposed new electric rate schedule in that state if they must meet conditions laid down by the commission, according to a Columbia, S. C., dispatch to the *United States Daily* on December 27th. The commission, which is conducting an inquiry into electric rates charged in South Carolina, recently refused to agree to certain conditions imposed by the utilities

upon their respective offers to make rate reductions. Subsequently, the commission notified the companies that the rates could be put into effect provided there was no increase to any customer, and provided the companies eliminated from the original proposals certain features termed by the commission as objectionable. Now the companies say that they cannot make such electric rate reductions proposed unless granted on the conditions set out in their original proposals.

Virginia

Utility Rates Loom As Political Issue

UTILITY rate readjustments will be an issue in the state elections in 1933, which may rival prohibition in public interest, it was stated in a news dispatch in the Richmond *News-Leader*, December 10, 1932. The state corporation commission is now working upon rates of the Old Dominion Power Company, and considering a variety of suggestions upon ways and means of keeping charges for electricity, gas, water, transportation, and telephone service in line with general commodity levels. The news item pointed out that the activity of the League of Virginia Municipalities, made public by the John Bauer report, holding that electric rates generally are too high in Virginia, has stirred up the curiosity of Virginia people who have formed the conclusion that the prices they pay for utilities to which they have granted monopolies should be reduced by the same percentage as the prices they are paying for other commodities and services during the depression. Investors, continues the news item, vigorously claim that to scale down utility rates is to bring the companies to disaster, and that this of all times is the time to keep political pressure away from public service companies.

Wisconsin

Cut-Rate Cabs Lose in Milwaukee

CUT-RATE cabs increased the cab business in Milwaukee 10 per cent in volume, but cut the companies' income 40 per cent and the drivers' commissions 50 per cent, John P. Wagner, vice president of the Boynton Cab Company of Milwaukee, told a city council subcommittee in Chicago, which is struggling with the question of whether the Chicago taxicab monopoly should be retained. Mr. Wagner testified that his company was forced into cut-rate competition in March, 1931.

High School Rate Experts Strike Snag

THE *Wisconsin Utilities Association Activities* for December, 1932, commented upon the recent claim by a Seneca (Wisconsin) High School physics class that a "discovery" of serious overcharges for street lighting had been made. Investigations by the teacher and pupils of this class seemed to indicate such serious overcharges as to warrant immediate action by the board of the village of Viola. But when the board met, the item states, it was decided not to hire anyone or to make any complaint, because it was found that the high school investigators had overlooked the price paid for operating and maintaining the city water pump.

Lilienthal Declines New Utility Post

DAVID E. Lilienthal, member of the state public service commission, declined to accept an appointment by Governor LaFollette as a director of the State Utility Corporation, which was created by the Wisconsin legislature as a vehicle for the operation of a system of state-owned utilities. The commissioner said that the statutes barred him from holding two salaried offices, and that his time was fully occupied in connection with the activities of the public service commission.

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Virginia

Utility Rates Loom As Political Issue

UTILITY rate readjustments will be an issue in the state elections in 1933, which may rival prohibition in public interest, it was stated in a news dispatch in the Richmond *News-Leader*, December 10, 1932. The state corporation commission is now working upon rates of the Old Dominion Power Company, and considering a variety of suggestions upon ways and means of keeping charges for electricity, gas, water, transportation, and telephone service in line with general commodity levels. The news item pointed out that the activity of the League of Virginia Municipalities, made public by the John Bauer report, holding that electric rates generally are too high in Virginia, has stirred up the curiosity of Virginia people who have formed the conclusion that the prices they pay for utilities to which they have granted monopolies should be reduced by the same percentage as the prices they are paying for other commodities and services during the depression. Investors, continues the news item, vigorously claim that to scale down utility rates is to bring the companies to disaster, and that this of all times is the time to keep political pressure away from public service companies.

Wisconsin

Cut-Rate Cabs Lose in Milwaukee

CUT-RATE cabs increased the cab business in Milwaukee 10 per cent in volume, but cut the companies' income 40 per cent and the drivers' commissions 50 per cent, John P. Wagner, vice president of the Boynton Cab Company of Milwaukee, told a city council subcommittee in Chicago, which is struggling with the question of whether the Chicago taxicab monopoly should be retained. Mr. Wagner testified that his company was forced into cut-rate competition in March, 1931.

High School Rate Experts Strike Snag

THE *Wisconsin Utilities Association Activities* for December, 1932, commented upon the recent claim by a Seneca (Wisconsin) High School physics class that a "discovery" of serious overcharges for street lighting had been made. Investigations by the teacher and pupils of this class seemed to indicate such serious overcharges as to warrant immediate action by the board of the village of Viola. But when the board met, the item states, it was decided not to hire anyone or to make any complaint, because it was found that the high school investigators had overlooked the price paid for operating and maintaining the city water pump.

Lilienthal Declines New Utility Post

DAVID E. Lilienthal, member of the state public service commission, declined to accept an appointment by Governor LaFollette as a director of the State Utility Corporation, which was created by the Wisconsin legislature as a vehicle for the operation of a system of state-owned utilities. The commissioner said that the statutes barred him from holding two salaried offices, and that his time was fully occupied in connection with the activities of the public service commission.

The Latest Utility Rulings

Cut Rate Taxicabs Restrained by Federal Court

For many years the Denver Tramway Corporation has been the owner and operator of a street railway system in Denver, Colorado, occupying the principal streets, with an investment of approximately $25,000,000. The street railway system is supplemented by bus service. During the year 1932 the city of Denver passed an ordinance in the form of a comprehensive code and regulating the operations generally of taxicabs within that city. On about April 1st of the year 1932, however, the operator of a fleet of small taxicabs invaded the city of Denver and began to cut into the revenues of the railway company. The railway company alleged that the taxicab operator owned no cabs itself, but advertised for, and made contracts with owners of cabs, pursuant to which the owners operated their own cabs under the control of the taxicab company. The railway company sued in Federal court for an injunction to restrain the alleged unlawful operations of the taxicab company on grounds that it had not complied with the Denver ordinance and, therefore, had no right to do business in or use the streets of the city. The taxicab company made a motion to dismiss the bill.

The Federal court granted a temporary restraining order and overruled the motion to dismiss. The court held that the city of Denver had the power to require that taxicab rates should be based upon the distance traveled and the service rendered, and to forbid the so-called "zone-system" and to require the exclusive use of taximeters. The court further held that the street railway's operating rights were "property rights" within the protection of the Fourteenth Amendment, which thereby gave to the company the right to sue for a Federal restraining order against any alleged unlawful act which would deprive it of such property rights without due process of law. It was conceded, of course, that a Federal court of equity could not protect the street railway company from lawful competition and guarantee it against any losses of business as a result of such taxicab operations. The court finally held, however, that the street railway company was entitled to protection by equity against the operations of a cab company to the extent that such cabs regularly operated between fixed terminals and sought patronage along the routes of the street railway company, or engaged in systematic cruising. *Denver Tramway Corp. v. People's Cab Co. of Denver, Inc. 1 F. Supp. 449.*

Rehearing Denied in the Mondovi Telephone Case

In the pages of this department in a preceding issue of Public Utilities Fortnightly there was carried a brief description of an order handed down by the Wisconsin commission on November 10, 1932, reducing rates for service charged by the Mondovi Telephone Company. The opinion was unusual in that it adopted book costs as the basis, not only of fair rate-making value, but also for computing the annual depreciation allowance, after repudiating as untrustworthy estimates of present fair value presented by the com-

pany itself. More recently the commission has denied an application of the company for a rehearing. In denying the motion for rehearing, the commission summarized its findings as follows:

"1. A public utility is estopped to deny that items reported as operating expenses in its sworn annual reports to the commission are operating expenses.

"2. It follows from this estoppel that a public utility, having reported under oath certain operating expenses, is precluded thereby from later asserting or relying on a property value for rate purposes which embraces items already charged as operating expenses.

"3. In determining a rate base under the circumstances of this case, it is proper to deduct from undepreciated value the accrued depreciation reserve, where this reserve has been accrued by a 'straight-line' method.

"4. Under the circumstances of this case, the ledger value (book cost) of the depreciable property is the basis upon which annual depreciation rates by the straight-line method should be determined."

The commission's opinion rebuked counsel for the company for intemperate language used during the argument on the application for rehearing. The company's counsel had alleged that the commission had denied the company access to "confidential information" which made the hearing a "mockery and sham of any hearing." The commission said that it is within the realm of fair argument for counsel to suggest that the decision of the commission was not sustained by the evidence before it, but it is quite another thing for counsel for a public utility company to impute that the commission based its order on material and data which had been unfairly presented. *Re Mondovi Telephone Co. U-4167.*

Illinois Commission Voids Securities Used in Unlawful Manipulation

ONE of the most unusual commission decisions involving the authorization of utility securities, and leading to one of the most unusual orders, has been handed down by the Illinois commission as a result of a citation of the Consolidated Utilities Corporation to show cause why certain commission orders authorizing the issuance of certain securities should not be annulled. It appears that on January 17, 1929, a certificate was issued to the Flora Gas and Fuel Company to operate a gas system in the community of Flora, Illinois. Little more than a year later (February, 1930), the same company was granted authority by the commission to issue $42,000 worth of common and preferred stock. In October, 1931, the company was granted authority to issue $60,000 worth of 6 per cent bonds to be sold at not less than 85 per cent of par, for the alleged purpose of constructing and installing certain gas improvements. A month later, the October order was changed so that the authority was granted in the name of the newly organized Consolidated Utilities Corporation, which succeeded the former Flora Gas and Fuel Company.

Meantime, it appears that on or about November 9, 1931, the newly organized Consolidated Utilities Corporation entered into an agreement with Henry L. Trout & Company, Chicago brokers, for the sale to that firm of $23,000 worth of the principal amount of the bond issue already mentioned. Under this agreement, the utility company was to receive as proceeds from the sale of such bonds, 85 per cent of the principal amount thereof, payable in instalments. At the same time, the Consolidated Utilities entered into an agreement with an affiliated construction company, known as the Mississippi Valley Construction Company, under which the latter agreed to erect a utility plant and pipe lines in accordance with specifications (never drawn) for a consideration of $56,550, to be paid for with $19,550 in cash and $37,000 in

the aforementioned bonds. Later on, the construction company entered into an agreement with the same Henry L. Trout & Company whereby for every bond sold by said Henry L. Trout & Company for the Consolidated Utilities Corporation (at 85 per cent of par) the brokerage company could draw (from bonds placed with them by the construction company) one bond of equal face value, crediting the Mississippi Valley Construction Company with 15 per cent of the face value of the bonds so withdrawn. The combined effect of these contracts would result in a sale at an average of 50 cents on the dollar of $46,000 face amount of bonds of the Consolidated Utilities Corporation, which would produce $23,000, available for actual construction of utility property. Evidence introduced before the Illinois commission seemed to indicate that the construction company had no other resources except the proceeds from the sale of the bonds, and that its chief purpose seemed to be as a medium through which bonds of the Consolidated Utilities Corporation could be sold or disposed of on terms not authorized by order of the commission. The construction company was organized by persons in control of the management of the Consolidated Utilities Corporation and had no construction equipment and no officers or employees having experience in that field or even in business management.

These irregularities were called to the attention of the commission by the assistant state's attorney of Cook county, and after considering the evidence in the record, the commission ordered the Consolidated Utilities Corporation to discontinue any further sale of its bonds. The order also rescinded authority previously granted for the issuance of the $60,000 worth of bonds, except for the amount already outstanding in the hands of investors. The Consolidated Utilities Corporation was ordered to obtain possession and deliver to the secretary of the commission bonds then in possession of Henry L. Trout & Company. The commission further ordered one of the directors of the Utilities Corporation to turn over certain other amounts of bonds then in his possession. Henry L. Trout & Company, acting for and on behalf of the Consolidated Utilities Corporation, was ordered to take up and deliver to the company (which in turn should deliver to the secretary of the commission) all of the bonds already sold to the public upon the repayment to the purchasers thereof of a consideration in cash or securities equal to the value of the price paid. The bonds so surrendered to the commission's secretary were ordered to be marked "canceled by order of the Illinois Commerce Commission," and delivered to the trustee under the mortgage securing the bonds. The Consolidated Utilities Corporation was ordered to make a full report of its compliance with the commission's order within sixty days and to make similar reports every sixty days thereafter until full compliance with such order is accomplished. *Illinois Commerce Commission v. Consolidated Utilities Corp. No. 21800.*

Wisconsin Commission Extends Control Over Hotel Telephone Service

In December, 1931, the Wisconsin commission authorized a service charge of 2 cents on each outgoing toll call from hotels in cities of the first class furnishing a specified type of telephone service. On petition of the Hotel Pfister, Inc., the commission issued an order for rehearing, and on the basis of more accurate and comprehensive information, it issued a second order on April 15, 1932, authorizing a service charge of 5 cents on outgoing local calls

from stations on branch exchanges of a certain class of hotels in cities of the first class. After this second order, however, the Wisconsin Telephone Company filed a petition to reopen again the matter, alleging that the order was unlawful and unreasonable. The substance of the company's objection was as follows:

> "1. The commission has no legal authority over contracts between a utility and its nonutility agents.
>
> "2. The telephone-using public is not affected by division of the message rate as long as the commission fixes a reasonable total message rate to be paid by the public.
>
> "3. Regulation of the division of the message rate is an unwarranted invasion of management functions.
>
> "4. Extension of control over hotel agency contracts involves control of contracts with other nonutility agents, thus encumbering the commission with matters of no concern to the telephone-using public."

The commission held that it has authority to establish telephone rates and regulations for service to all subscribers, and that this broad and all-inclusive power included the power to fix the rate at which a utility sells service to the hotels. It was pointed out that the hotel is more than a mere agent of the utility since in its relations with the telephone company the hotel is both an agent and a patron of the utility, buying telephone service from the utility and selling a portion of such service to the public in its capacity as an agent of the hotel. The commission also decided that the complete service rate charged hotels must be authorized by and on file with the commission to insure against discrimination, as provided by Wisconsin statutes. The opinion stated that the laws of Wisconsin which gave the commission authority and power to determine reasonable rates and regulations for all utilities would be meaningless and futile unless the commission had authority to determine the division of a message rate for telephone service, so as to protect the utility, on one hand, from the inadequate earnings from such a class of service, and the public, on the other, from excessive rates. It follows from this, it was said, that control over domestic rates to the public would prove ineffective unless domestic rates to the hotel were also regulated. As a final consideration, the commission's opinion stated that the Wisconsin statutes grant to the commission a broad and supervisory power over all facilities and transactions directly relating to furnishing telephone service to the public. The commission stated that it did not have to exercise authority over all types of agency contracts. The company had urged that such a supervision would encumber the commission with matters of no concern to the telephone-using public. The opinion stated:

> "In the situation before us, we perceive certain rather marked and distinguishing characteristics, which clearly separate hotel telephone service from other classes of service."

The commission denied that the exercise of control over the division of message rates for hotel service would be an unwarranted invasion of the managerial functions making contacts with the utility's agent.

The commission, however, modified its order of April 15, 1932, by allowing an "Option B" rate for hotels in cities of the first class catering primarily to transient guests, which maintain a switchboard with 24-hour service and an extension station in the room of each guest, which provide outside telephone service. Hotels electing to take service under "Option B" were required to place in the room of each guest a conspicuous notice to the effect that 5 cents of the allowed message rate of 10 cents per outgoing call was for a "service charge." Hotels electing the "Option B" rate may also be required by the telephone company to show on their bills to their guests such service charges separately from the balance of the charges for telephone service. *Re Wisconsin Telephone Co. 2-U-8.*